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UPREME COURT, U. S.

No. 800

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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SUPREME COURT, U. S.

In the Matter of the Petition

of

SKIBS A/S JOLUND

as owner of the Motor Vessel BLACK GULL, for exoneration from or limitation of liability for damages arising out of a fire on board said vessel on July 18, 1952

APPENDIX ON BEHALF OF SKIBS A/S JOLUND, PETITIONER-APPELLEE

HYNE, BRUSH, SMITH & MICHELSEN,
Proctors for Petitioner-Appellee.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the Motor Vessel BLACK GULL, for exoneration from or limitation of liability for damages arising out of a fire on board said vessel on July 18, 1952

APPENDIX ON BEHALF OF SKIBS A/S JOLUND, PETITIONER-APPELLEE

Answer of United Fruit Company

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

UNITED FRUIT COMPANY as Bailee of certain cargo carried on board the Motor Ship BLACK GULL, * * * answers the Petition of SKIBS A/S JOLUND as owners of the Motor Ship BLACK GULL, * * *:

FIRST: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "FIRST".

SECOND: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "SECOND".

THIRD: Denies the matters contained in Article "THIRD".

FOURTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "FOURTH".

FIFTH: Denies the matters contained in Article "FIFTH".

SIXTH: Admits that on July 18, 1952, while proceeding from Rotterdam to New York, and while approximately 65 miles off Montauk Point, a fire was discovered on board the MS BLACK GULL. It further admits that the fire spread rapidly and that the MS BLACK GULL was in due course abandoned. It denies knowledge or information sufficient to form a belief as to the amount of damage due and loss of property and of injuries and debts which might have occurred as a result of the fire.

Answer of United Fruit Company

Denies knowledge or information sufficient to form a belief as to whether or not such loss and damage and injuries and debts are presently calculable. Except as specifically admitted herein, it denies the matters contained in Article "SIXTH".

SEVENTH: Denies the matters contained in Article "SEVENTH".

EIGHTH: Denies the matters contained in Article "EIGHTH".

NINTH: Denies the matters contained in Article "NINTH".

TENTH: Admits the matters contained in Article "TENTH".

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "ELEVENTH".

TWELFTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "TWELFTH".

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the matters contained in Article "THIRTEENTH".

FOURTEENTH: Admits the Admiralty and Maritime jurisdiction of this Honorable Court. Except as specifically admitted, it denies the matters contained in Article "FOURTEENTH".

FURTHER ANSWERING PETITIONER HEREIN, UNITED FRUIT COMPANY ALLEGES ON INFORMATION AND BELIEF AS FOLLOWS:

FIFTEETH: UNITED FRUIT COMPANY is a corporation duly organized and existing under and by virtue of the laws

of the State of New Jersey with an office and place of business in the City, County and State of New York.

SIXTEENTH: On or about July 1, 1952, it issued its own through bills of lading covering the following merchandise:

1) Tela Railroad Company—ultimate consignee—enamelware

2) Cia, Bananera de Costa Rica—Limon—ultimate consignee—pocket knives and enamelware

3) Grenada Company—Puerto Libertador—ultimate consignee—enamelware

Photostatic copies of the aforesaid bills of lading are attached to the claim which was previously filed on September 30, 1952 and which forms a part of the record of this proceeding.

SEVENTEENTH: At all times mentioned herein the ultimate consignees named in the aforesaid bills of lading were wholly-owned subsidiaries of UNITED FRUIT COMPANY and UNITED FRUIT COMPANY answers the Petition as Bailee of the aforesaid cargo and as agent for the owners thereof.

EIGHTEENTH: UNITED FRUIT COMPANY thereafter entered into an agreement under and by which the aforesaid goods were to be carried from the port of shipment to New York on the MS BLACK GULL.

NINETEENTH: Thereafter and pursuant to the aforesaid agreement and pursuant to the terms and provisions of the aforesaid bills of lading, the merchandise previously referred to was delivered to and loaded upon the MS BLACK GULL in good order and condition and all in accordance with a certain consideration which was paid and the terms and provisions of the aforesaid agreements.

Answer of United Fruit Company

TWENTIETH: On or about July 18, 1952 while the vessel was proceeding to the United States with the aforesaid cargo on board a fire occurred. Thereafter, the vessel was abandoned as a constructive total loss and the aforesaid cargo, all in violation of the Petitioner's obligations and duties as a common carrier of merchandise by water for hire has remained short-delivered up to and including the present time.

TWENTY-FIRST: By reason of these premises damages have been sustained in the amount of $11,525.56, no part of which has been paid although duly demanded.

TWENTY-SECOND: UNITED FRUIT COMPANY is authorized to make this claim both in its own behalf and in behalf of the aforementioned consignees.

All and singular the premises are true and within the Admiralty and Maritime jurisdictions of the United States and of this Honorable Court.

WHEREFORE, UNITED FRUIT COMPANY prays that a decree be entered in its favor against Petitioner herein in the amount of $11,525.56 together with interest, costs and disbursements.

EUGENE F. RUSSELL, JR.
Proctor for UNITED FRUIT COMPANY,
as Bailee, etc.

(Verified by Eugene F. Russell, Jr., Atty. March 24, 1953.)

Answer of Jan A. Driesprong, et al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Answer of JAN A. DRIESPRONG, et al., • • • to the petition of SKIBS A/S JOLUND of Oslo, Norway, owner of the M. S. "BLACK GULL", for exoneration from or limitation of liability, alleges upon information and belief as follows:

FIRST: Claimants have heretofore filed their claims herein under oath by their attorneys, ABBERLEY, KOOIMAN & AMON, on their behalf and on behalf of all others in interest as aforesaid.

SECOND: Claimants admit that the petitioner, at all times herein mentioned, was the owner of the M. S. "BLACK GULL", but deny that they have knowledge or information sufficient to form a belief as to the remaining allegations contained in Article "FIRST" of the petition.

THIRD: Claimants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in Article "SECOND" of the petition.

FOURTH: Claimants deny each and every one of the allegations contained in Article "THIRD" of the petition.

FIFTH: Claimants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in Article "FOURTH" of the petition.

SIXTH: Claimants deny each and every one of the allegations contained in Article "FIFTH" of the petition.

SEVENTH: Claimants answering Article "SIXTH" of the petition admit that on July 18, 1952, the M. S. "BLACK

GULL" was proceeding on a voyage from Rotterdam to New York and that a fire occurred on said vessel approximately 65 miles off Montauk Point, New York, causing those on board to abandon said ship, but deny each and every one of the remaining allegations.

EIGHTH: Claimants deny each and every one of the allegations contained in Article "SEVENTH" of the petition.

NINTH: Claimants deny each and every one of the allegations contained in Article "EIGHTH" of the petition.

TENTH: Claimants deny that petitioner is entitled to the benefit of limitation of or exoneration from liability under the laws of the United States as alleged in Article "NINTH" of the petition, and that petitioner has valid defenses to the claims filed by claimants either on the facts or the law.

ELEVENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "TENTH" of the petition.

TWELFTH: Claimants admit the allegations contained in Article "ELEVENTH" of the petition.

THIRTEENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "TWELFTH" of the petition as amended, except that claimants admit that their attorneys stated that they represened Mr. and Mrs. Jan A. Driesprong and their daughter, Wilhelmina Driesprong.

FOURTEENTH: Claimants deny any knowledge or information sufficient to form a belief as to the allegations contained in Article "THIRTEENTH" of the petition as amended.

FIFTEENTH: Answering Article "FOURTEENTH" of the petition, claimants admit the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but deny that all of the premises of the petition are true.

FURTHER ANSWERING THE PETITION CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF:

SIXTEENTH: Claimants repeat and reallege the allegations of Articles "FIRST" through "FIFTEENTH" of this Answer.

SEVENTEENTH: At all times hereinafter mentioned, petitioner was the owner of the M. S. "BLACK GULL" which vessel was engaged in the common carriage of passengers and their personal effects on, among others, the waters of the North Atlantic Ocean between, among others, the ports of Rotterdam, Antwerp and New York.

EIGHTEENTH: Petitioner failed to furnish a seaworthy vessel, to wit the M. S. "BLACK GULL", to the charterers, Black Diamond Steamship Corp., with knowledge that said charterers would carry passengers and naphthalene on said ship. By reason of the unseaworthiness of said vessel, a fire occurred on said ship in the North Atlantic Ocean on July 18, 1952, while approximately 65 miles off Montauk Point, New York, and was eventually gutted by said fire causing claimants to abandon the ship; causing claimants to suffer personal injuries and loss of personal effects, all solely by reason of the negligence and with the actual fault, privity or knowledge of the petitioner as herein set forth.

NINETEENTH: By reason of the wrongful acts, neglect and fault of the petitioner, its officers, agents and servants in the construction, equipment, manning, management and navigation of the M. S. "BLACK GULL" and in the management of her equipment, tackle, etc., including but not limited to the following particulars, the claimants herein suffered personal injuries and loss of personal effects which were not in any degree caused by any fault, neglect or want of care on the part of claimants herein but were solely and entirely caused by the wrongful acts, neglect and fault of the petitioner, its officers, agents and servants and with its

privity and knowledge. The following particulars, among others, will be pointed out at the trial:

the M. S. "BLACK GULL" sailed from the port of Rotterdam in an unseaworthy and unsafe condition, in that said vessel was improperly equipped, designed and constructed without proper regard for fire prevention, fire fighting equipment and protection from fire, and had an inadequate and defective fire alarm system; in that the fire fighting equipment was defective, not in proper condition and inadequate; in that the fire boxes of said vessel were improperly designed and placed for the proper protection of the passengers against disaster by fire and the crew not properly instructed in their use; in that the fire detection system of the vessel was improper, insufficient, defective and not properly manned and operated; the electrical system, the emergency lighting system, electric control and communication system of the vessel were improperly placed, defective and without protection against fire; in that specially trained fire crews were not organized among the crew; in that fire drills were not previously held without warning to the crew and passengers; in that the electrical fire alarm system was not tested at proper intervals; in that the vessel was not equipped with sufficient fire hoses on the sides of the outside decks of the vessel, and in that there was an insufficient supply of life jackets for passengers.

FURTHER ANSWERING THE PETITION, CLAIMANTS ALLEGE UPON INFORMATION AND BELIEF.

TWENTIETH: Claimants repeat and reallege the allegations contained in Articles "FIRST" through "NINETEENTH" of this Answer.

TWENTY-FIRST: At all times hereinafter mentioned, the M. S. "BLACK GULL" was provisioned by the petitioner, and her officers and crew were all employees of the petitioner, and said vessel was under charter to the Black Diamond

Steamship Corp., having its principal office at 39 Broadway, Borough of Manhattan, City and State of New York.

TWENTY-SECOND: Said vessel had for some time past on previous voyages and while owned by said SKIBS A/S JOLUND and under charter to the Black Diamond Steamship Corp., carried deck cargoes of naphthalene and passengers from Rotterdam and Antwerp to east coast United States ports.

TWENTY-THIRD: The petitioner, its master, superintendent or managing agent knew that the M. S. "BLACK GULL", while under charter to the Black Diamond Steamship Corp., for some time past had been carrying naphthalene in large quantities as a deck cargo together with passengers, and that such cargo and passengers would be carried by said vessel on the voyage during which this disaster occurred.

TWENTY-FOURTH: The petitioner, having knowledge that its ship would carry passengers and naphthalene in large quantities, through its master, superintendent or managing agent was negligent in the following respects:

(a) permitting the charterer to carry large quantities of naphthalene as deck cargo without warning the passengers at the time of their embarkation;

(b) permitting carriage of naphthalene as deck cargo without taking proper safeguards to properly stow such cargo, to keep it moist, to protect it from heat, the rays of the sun, or otherwise protect it from the possibility of fire;

(c) permitting carriage of naphthalene as deck cargo without taking proper safety measures to protect it from drums of explosive chemicals;

(d) permitting carriage of naphthalene as deck cargo and stowing it in such a manner that certain fire fighting equipment was not available for use and other fire fighting equipment could not be efficiently used;

(e) permitting carriage of naphthalene as deck cargo without carrying or having available for immediate use a chemical agent effective in the extinguishing of a naphthalene fire;

(f) failure to hold lifeboat drills, fire fighting drills and other evolutions with respect to safety of life at sea among the crew and passengers; and

(g) failure to maintain, in view of the inflammable and dangerous nature of the deck cargo, a proper fire watch of the deck cargo.

TWENTY-FIFTH: All and singular, the provisions of this Answer are true.

WHEREFORE, claimants pray that their claims herein be allowed; that the petition herein be denied; and that this Court grant claimants such other and further relief as in law they may be entitled to receive.

ABBERLEY, KOOIMAN & AMON,
Proctors for Claimants,
55 Liberty Street,
New York 5, N. Y.

(Verified by John J. Abberley, attorney, November 24, 1952.)

Answer of Kaare B. Blixt

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The answer of KAARE B. BLIXT to the Petition and Amended Petition, respectfully shows:

FIRST: Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs FIRST, FOURTH, ELEVENTH, TWELFTH and THIRTEENTH of the petition and amended petition.

SECOND: Denies each and every allegation contained in paragraphs THIRD, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH and TENTH of the petition and amended petition.

WHEREFORE, claimant prays that this Court will adjudge that the petitioner is liable to the full extent of loss, damage or injury arising out of or in consequence of the occurrence of the fire aboard the Motorship BLACK GULL referred to in the petition and amended petition and that it be adjudged that the petitioner is liable for full damages without limitation or value of petitioner's interest in the Motorship BLACK GULL and pending freight at the time in question, and that a decree may be entered charging and holding said petitioner liable to the full extent of the claims filed in the above entitled proceedings.

That the claimant may have such other and further relief as the justice of the cause may require.

JACOB RASSNER
Proctor for Kaare B. Blixt
220 Broadway
New York 38, N. Y.

(Verified by Jacob Rassner, Attorney, September 25, 1952.)

Answer of Olav Karlsen

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Claimant, OLAV KARLSEN, having duly filed a claim herein now answers the petition of SKIBS A/S JOLUND, by his attorney HERMAN E. COOPER, upon information and belief as follows:

1. Claimant admits that petitioner was and it is owner of the Motor Ship Black Gull and denies information and knowledge sufficient to form a belief as to the remaining facts alleged in paragraph "FIRST" of the petition.

2. Claimant denies information and knowledge sufficient to form a belief with respect to the allegations of paragraph "SECOND" of the petition.

3. Claimant denies all the allegations in paragraph "THIRD".

4. Claimant admits that the Motor Ship Black Gull was registered and operated under the Norwegian flag as a cargo vessel and denies sufficient information and knowledge to form a belief with respect to the remaining allegations in paragraph "FOURTH".

5. Claimant denies all the allegations alleged in paragraph "FIFTH" of the petition.

6. Claimant denies the allegations in paragraph "SIXTH" except that on the said date, the Black Gull was proceeding on a voyage from Rotterdam to New York and that while the vessel was approximately 65 miles off Montauk Point, a fire commenced; that the flames spread rapidly and that the ship was abandoned.

Answer of Olav Karlsen

7. Claimant denies the allegations of paragraphs "SEVENTH" and "EIGHTH" of the petition.

8. Claimant denies such allegations as are made as to valid defenses and opposes petitioner's claim or exoneration in paragraph "NINTH" of the petition, opposes petitioner's claim or exoneration in paragraph "NINTH" of the petition, and similarly opposes the relief sought in paragraph "TENTH".

9. Plaintiff denies the allegations set forth in paragraph "ELEVENTH" except that such affidavits were so filed.

10. Plaintiff admits allegations of paragraph "TWELFTH" but denies sufficient information and knowledge on which to base a belief with respect to the allegations of paragraph "THIRTEENTH".

11. Claimant denies the allegations of paragraph "FOURTEENTH" of the petition.

WHEREFORE, claimant prays that an order of this Court issue denying the relief requested by petitioner, and dismissing the petition therein together with costs and disbursements herein; and that the relief sought by claimant in his claim duly filed in this Court may be granted together with costs and disbursements therein.

Dated: New York, N. Y., December 18th, 1952.

HERMAN E. COOPER,
Attorney for Claimant-Respondent,
Office and P. O. Address,
No. 225 Broadway,
New York 7, N. Y.

(Verified by Richard Gyory, Attorney, December, 1952.)

Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

INTERROGATORIES propounded by Petitioner SKIBS A/S JOLUND to claimants AMERICAN SMELTING & REFINING Co., and all other claimants listed in Schedule A attached to said claimant's answer; and to claimants MARIA ANGELINA VERBEEK, MAURICE VERBEEK, and SIMONE VERBEEK; and to claimant WURTTEMBERGISCHE etc. * * *, to be answered by each and all of said claimants within fifteen days in writing under oath, pursuant to Rule 31 of the General Rules in Admiralty of the United States Supreme Court:

1. Do claimants allege or contend that the BLACK GULL was not seaworthy, and if so in what manner and respect and why is said vessel alleged to have been unseaworthy?

2. Do claimants allege or contend that the BLACK GULL was not tight, staunch and strong, and if so in what manner and respect and why is said vessel alleged not to have been tight, staunch and strong?

3. Do claimants allege or contend that the BLACK GULL was not fully manned and equipped, and if so in what manner and respect and why is said vessel alleged not to have been fully manned and equipped?

4. Do claimants allege or contend that the petitioner SKIBS A/S JOLUND failed to use due diligence to make the BLACK GULL seaworthy, and if so in what manner and respect did the petitioner fail to use due diligence?

5. Do claimants allege or contend that the losses and damages to, or destruction of the BLACK GULL or her cargo

and the deaths or injuries to some of her crew and passengers, were caused or contributed to by any fault, neglect, or want of care of the BLACK GULL, or those in charge of her, or of the petitioner, and if so what was each and every fault, neglect, or want of care of the BLACK GULL, or those in charge of the vessel or of the petitioner?

6. Do the claimants allege or contend that the fire on the BLACK GULL on or about July 18th, 1952 was due to the design or neglect of the petitioner SKIBS A/S JOLUND, or was caused or contributed to by the privity, knowledge and fault of the petitioner, or petitioner's agents, servants or employees; and if so what was each and every act or omission of such design, neglect, privity, knowledge or fault, and which of petitioner's officers, directors, agents, servants or employees was guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault?

7. Do claimants allege or contend that the petitioner breached or violated any statute, rule, regulation or law of any foreign country in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the substance or content of each and every such statute, rule, regulation or law? What is the citation, date, reference, and other identification of such statute, rule, regulation, or law?

8. Do claimants allege or contend that the petitioner breached or violated any custom or usage of any foreign port or country in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the alleged custom or usage, and in what foreign port or country is there such a custom or usage.

9. Do claimants allege or contend that the petitioner breached or violated any statute, rule, regulation, or law of

the United States, or any governmental department or authority in the United States, in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the statute, rule, regulation or law, with a citation and reference thereto sufficient for its identification.

10. Do claimants allege or contend that the petitioner breached or violated any custom or usage of the steamship business or trade in the United States in connection with the loading and stowage of the BLACK GULL, or in connection with that vessel, on the voyage on which the fire of July 18, 1952 occurred, and if so what is the custom and usage.

11. In so far as is known to the claimants what was each and every cause or contributing cause, of fire on the BLACK GULL which occurred on or about July 18, 1952?

12. Did the claimants or any of them make any shipments of naphthalene on vessels of the Black Diamond Steamship Corp., prior to the shipments of naphthalene on that vessel on the voyage on which the fire occurred on July 18, 1952? If so (a) when, where, and on what vessels did the claimants make such shipments, and (b) did the claimants know that such shipments were to be carried, and were carried, on the deck of said vessels.

13. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the loading of cargo on the BLACK GULL for the voyage on which the fire occurred on July 18, 1952, and if so what was each and every respect in which there was such fault or negligence?

Interrogatories

14. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL were at fault or negligent with respect to the stowage of cargo on the BLACK GULL for the voyage on which the fire occurred on July 18, 1952, and if so what was each and every respect in which there was such fault or negligence?

15. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the custody of the cargo on the BLACK GULL for the voyage on which the fire occurred on 18 July 1952, and if so what was each and every respect in which there was such fault or negligence?

16. Do the claimants or any of them allege or contend that the petitioner SKIBS A/S JOLUND, or its agents, servants or employees, or the master or officers of the Motor Ship BLACK GULL, were at fault or negligent with respect to the care of the cargo on the BLACK GULL for the voyage on which the fire occurred on 18 July 1952, and if so what was each and every respect in which there was such fault and negligence?

17. Did the claimants or any of them have an agent, representative, surveyor or employee of any kind, on board the BLACK GULL while the cargo which is the subject of this action was being loaded; and if so who was that agent, representative, surveyor or employee, and which claimant or claimants did he represent or by which was he employed?

18. Do the claimants or any of them allege or contend that cargo was lost or damaged (a) at the loading port, or

(b) while the BLACK GULL was at sea, or (c) while the BLACK GULL was at any port of discharge, and if so at what port?

19. Did the claimants or any of them, or any agent, servant or employee of the claimants or the shippers tally the cargo, and if so was such tally (a) in the hold of the vessel, or (b) on the quay, or (c) at some other point or place and if so at what other point or place?

New York, July 30, 1954.

Yours, etc.,

PYNE, LYNCH & SMITH
Proctors for Petitioner
116 John Street
New York 38, N. Y.

To:

BIGHAM, ENGLAR, JONES & HOUSTON, ESQS.,
Proctors for Claimants
99 John Street
New York 38, N. Y.

Answers to Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

AMERICAN SMELTING & REFINING COMPANY AND THE OTHER CLAIMANTS LISTED IN SCHEDULE A ANNEXED TO SAID CLAIMANTS' ANSWERS AND OF WURTTEMBERGISCHE UND BADISCHE VEREINIGTE VERSICHERUNGSGESELLSCHAFTEN ANSWERING THE INTERROGATORIES PROPOUNDED TO THEM BY PETITIONER, ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:

1. Claimants do allege and contend that the "BLACK GULL" was not seaworthy for the voyage described in the petition in the following respects:

(a) in that she was so loaded and stowed that she could not lawfully complete the voyage contracted for in the bill of lading;

(b) in that she was so loaded and stowed as to present a serious and immediate danger of damage to her and to her cargo by fire;

(c) in that she was not properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage;

(d) in that by reason of her manner of stowage, her holds and other parts of the ship in which goods were stowed were not fit and safe for their reception, carriage and preservation;

(e) in that she was loaded and stowed in contravention of safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge;

(f) in that she was loaded and stowed in contravention of the applicable statutes and regulations of her ports of loading.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

2. Claimants allege and contend that the "BLACK GULL" was not tight, staunch and strong in the respects specified in answer to the First Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

3. Claimants allege and contend that the "BLACK GULL" was not fully equipped in the respects specified in answers to the First Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

4. Claimants allege and contend that petitioner failed to use due diligence to make the "BLACK GULL" seaworthy in the following respects:

(a) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was so loaded and stowed that she could lawfully complete the voyage contracted for in the bill of lading;

(b) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was so

loaded and stowed as not to present a serious and immediate danger of damage to her and to her cargo by fire;

(c) in that it, being a common carrier, failed and omitted to secure that the "BLACK GULL" was properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage;

(d) in that it, being a common carrier, failed and omitted to secure that by reason of her manner of stowage, her holds and other parts of the ship in which goods were stowed were fit and safe for their carriage and preservation;

(e) in that it, being a common carrier, failed and omitted to secure that she was loaded and stowed in conformity with safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge;

(f) in that it, being a common carrier, failed and omitted to secure that she was loaded and stowed in conformity with the applicable statutes and regulations of her ports of loading.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

5. Claimants allege and contend that the losses and damage to their cargo were caused or contributed to by the "BLACK GULL" and those in charge of her, and the petitioner, in the respects specified in answer to the Fourth Interrogatory.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any

of the evidence which may be adduced by any of the parties to this proceeding.

6. Claimants allege and contend that the fire on the "BLACK GULL" on or about July 18, 1952, was due to the design or neglect of petitioner, and was caused or contributed to by the privity, knowledge and fault of the petitioner and of its agents, servants and employees, in the respects specified in answer to the Fourth Interrogatory. The officers, directors, agents, servants and employees of petitioner who were guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault were such of petitioners, officers, directors, agents, servants and employees as were charged with the duties in the discharge of which petitioner failed, as alleged in answer to the Fourth Interrogatory. Pending receipt of petitioner's answers to the interrogatories propounded to petitioner by these claimants, these claimants are not in a position to supply their names or to describe them more particularly.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

7. Claimants allege and contend that petitioner breached and violated statutes, rules and regulations of the Kingdom of Belgium and of the Kingdom of The Netherlands in connection with the loading and stowage of the "BLACK GULL" and in connection with the "BLACK GULL" on the voyage on which the fire of July 18, 1952 occurred. The substance and content of the statutes, rules and regulations which claimants allege and contend the petitioner breached and violated are those laws, rules and regulations relating to shipping and to the carriage of goods and passengers which require that naphthalene, when stowed on deck, shall be stowed under cover or covered, and those laws, rules and regulations relating to shipping and to the carriage of goods

and passengers which require, in general, that vessels departing from the ports of those countries shall be seaworthy, properly loaded and stowed and provided with all proper, necessary, appropriate and usual safeguards against the outbreak of fire on board. No one of these claimants is a member of the Bar of the Kingdom of The Netherlands or of the Bar of the Kingdom of Belgium and claimants are presently unable to give citations, dates, references or other identification of such statutes, rules, regulations or laws, but they expect in due course to adduce evidence of members of the Bar of those countries who, they believe, will be able to supply such identification.

8. Claimants allege and contend that petitioner breached and violated customs and usages of the Kingdom of The Netherlands and of the Kingdom of Belgium and of the ports of Rotterdam and Antwerp in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in that it permitted the stowage and carriage of naphthalene on deck uncovered; in that it caused or permitted the vessel to depart from those ports in an unseaworthy condition, improperly loaded and stowed, and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board.

The foregoing specifications are based on all the information now available to claimants. Claimants reserve the right to rely upon any further respects suggested by any of the evidence which may be adduced by any of the parties to this proceeding.

9. Claimants allege and contend that the petitioner breached and violated the statutes, rules, regulations and laws of the United States in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in that it permitted the vessel to clear from the ports of Antwerp and Rotterdam for United States ports

in an unseaworthy condition improperly loaded and stowed and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board; and furthermore, but without limiting the generality of the foregoing, in that it permitted the vessel to clear from said ports for United States ports loaded in contravention of the requirements of the Regulations of the United States Coast Guard governing the transportation of explosives, etc. on board vessels (46 C. F. R. part. 146.)

10. Claimants allege and contend that petitioner breached and violated customs and the usages of the steamship business or trade in the United States in connection with the loading and stowage of the "BLACK GULL" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred in the following respects:

It permitted the vessel to clear from the ports of Antwerp and Rotterdam for United States ports in an unseaworthy condition, improperly loaded and stowed and not provided with all proper, necessary, customary and usual safeguards against the outbreak of fire on board; and furthermore, but without limiting the generality of the foregoing, in that it permitted the vessel to clear from said ports for United States ports loaded in contravention of the requirements of the Regulations of the United States Coast Guard governing the transportation of explosives, etc. on board vessels (46 C. F. R. part. 146).

11. None of these claimants was on board the "BLACK GULL" on the voyage on which the fire occurred on or about July 18, 1952, and none of these claimants therefore has any knowledge derived from personal observation as to the cause or causes of the said fire. In so far as claimants have been able to obtain information subsequent to the fire, they are informed, and believe, that the fundamental cause of the fire was the negligent stowage on the deck of the "BLACK GULL" of a large quantity of bagged naphthalene without

any covering, and that the outbreak of fire which they are informed was in that stow of bagged naphthalene, was brought about by the exposure of the highly inflammable naphthalene to elements which caused its ignition.

12. The information sought by this interrogatory is irrelevant and immaterial, and claimants object and except to answering it.

13, 14, 15 and 16. See answers to interrogatories No. 4.

17. Claimants' proctors are not presently in the possession of information with which to answer this interrogatory, but have entered into correspondence to obtain the information with which to answer it. As soon as the information is received it will be furnished by supplemental answer.

18. Claimants allege and contend that their cargo was lost or damaged while the "BLACK GULL" was at sea. They further allege and contend that certain additional loss or damage may have occurred to it at the port of New York or at the port of Baltimore, but they further allege and contend that any such additional loss or damage at those ports was the direct result of occurrences while the "BLACK GULL" was at sea.

19. Claimants' proctors are not presently in the possession of information with which to answer this interrogatory, but have entered into correspondence to obtain the information with which to answer it. As soon as the information is received it will be furnished by supplemental answer.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & Post Office Address
99 John Street
New York 38, N. Y.

(Verified by John W. R. Zisgen, attorney, September 22, 1954.)

Exception to Answers to Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Petitioner SKIBS A/S JOLUND excepts and objects to the answers of the claimants American Smelting & Refining Co., et al, verified 22 September 1954, on the following grounds:

Answer to Interrogatory 1: Subdivisions (a), (b), and (d) claimants do not state in what manner or respect or why they allege or contend the loading and stowage of the BLACK GULL was improper, wrong, or unseaworthy. Subdivision (c) claimants do not state in what manner or respect or why the BLACK GULL was not properly equipped and supplied, or what claimants allege or contend was improper or wrong with respect to the vessel's equipment or supplies. Subdivision (e) claimants do not state what the safe and proper practices are which allegedly were contravened. Subdivision (f), claimants do not state what statutes or regulations are alleged to have been contravened, and do not give any references to or identification of any statutes or regulations, and do not state the content or substance of such statutes and regulations.

Answer to Interrogatory No. 2: Claimants do not state in what manner or respect or why the BLACK GULL is alleged not to have been tight, staunch, and strong; and the answer is insufficient, vague and indefinite for the same reasons as stated in the foregoing exceptions to the answer to Interrogatory No. 1.

Answer to Interrogatory No. 3: Claimants do not state in what manner or respect or why the BLACK GULL is

alleged not to have been fully equipped, or what allegedly was lacking or improper in her equipment; and the answer is insufficient, vague and indefinite for the same reasons as stated in the foregoing exceptions to the answer to Interrogatory No. 1.

Answer to Interrogatory No. 4: Subdivisions (a), (b), and (d), claimants do not state in what manner or respect or why the loading and stowage of the BLACK GULL is alleged or contended to have been unlawful, improper, dangerous, unfit, or unsafe. Subdivision (c), claimants do not state in what manner or respect or why the BLACK GULL was not properly equipped or supplied. Subdivision (e), claimants do not state what the safe and proper practices are which allegedly prevailed at loading and discharge ports and which petitioner allegedly failed to secure. Subdivision (f), claimants do not state what statutes and regulations the loading and stowage of the BLACK GULL was not in conformity with, and do not give any reference to or identification of any statutes or regulations, and do not state the content or substance of such statutes or regulations.

Answer to Interrogatory No. 5: Claimants do not state any specific alleged fault which caused or contributed to damage to claimants' cargo. Claimants should state and be required to state specific alleged faults in loading, stowage, equipping and supplying of the vessel. Petitioner repeats the foregoing exceptions herein to the answer to the fourth interrogatory.

Answer to Interrogatory No. 6: The answer is in effect no answer at all. Claimants have failed to state, and should be required to state, specific acts which claimants allege or contend constituted design or neglect of the petitioner, and petitioner is entitled to specifications and statement by claimants of each and every alleged act or omission of the petitioner which claimants alleged caused the

fire, and which constituted design or neglect. Claimants' answer to the fourth interrogatory, referred to and incorporated in the answer to this sixth interrogatory, is excepted to on the grounds hereinbefore stated.

Answer to Interrogatory No. 7: Claimants' answer is insufficient, vague, and indefinite; does not state or identify by citation, reference, or otherwise, any statute, rule, or regulation, nor the content or substance thereof. Claimants, alleging foreign law, are and should be required to plead and identify such law with definiteness, and citation of any statute, rule or regulation which claimants rely upon. Claimants' explanation or excuse for their answer that they are not members of the bar of the Kingdoms of Netherlands and Belgium should be stricken out as immaterial subterfuge.

Answer to Interrogatory No. 8: Claimants' answer is insufficient, vague, and indefinite; does not state what custom or usage claimants rely on, or what any such custom or usage is alleged to require with respect to loading and stowage. Claimants are, and should be required to state clearly and with definiteness the content or substance of the custom and usage to which they refer.

Answer to Interrogatory No. 10: Claimants do not state in what manner or respect the BLACK GULL was unseaworthy and improperly loaded and stowed, and not provided with proper necessary customary and usual safeguards against outbreak of fire. Claimants do not state, and should be required to state, clearly and with definiteness, each custom and usage alleged to have been breached or violated by the petitioner.

Answer to Interrogatory No. 11: Claimants do not state, and should be required to state and name "the elements" which they allege or contend did in fact cause the ignition of the naphthalene, or if they can not so state, what ele-

ments could have or might have caused the ignition of the naphthalene.

Answer to Interrogatory No. 12: Claimants' refusal to answer this interrogatory is unwarranted. Claimants' time to except and object to the interrogatory has long since expired. The time of claimants to answer this and the other interrogatories at claimants' request was extended, but claimants did not request or obtain any extension of time to except or object, and the extended time to answer has also expired. Further, petitioner alleges that the interrogatory concerns relevant and material matter.

Answers to Interrogatories Nos. 13, 14, 15 and 16: Petitioner repeats and incorporates herein the same exceptions and objections set forth in petitioner's foregoing exceptions to the answer to interrogatory No. 4.

Answers to Interrogatories Nos. 17 and 19: Claimants have completely failed to answer these interrogatories.

29 September 1954

Yours etc.,

PYNE, LYNCH & SMITH,
Proctors for Petitioner,
116 John Street,
New York 38, New York.

Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Petitioner SKIBS A/S JOLUND having on July 30, 1954 filed and served interrogatories addressed to American Smelting & Refining Company, et al, claimants who filed claims for damage to cargo on board the motor ship BLACK GULL at the time of the fire referred to in the petition, and the said claimants having on 22 September 1954 filed and served answers to some of the said interrogatories, and having stated in said answers that supplementary answers would be served furnishing the information requested in petitioner's interrogatories numbers 17 and 19, but no such supplementary answers having as yet been filed or served; and the petitioner having on 29 September 1954, filed exceptions to the answers of the said cargo claimants; and the said exceptions having come on to be heard on 25 January 1954; and the petitioner having appeared and been heard by its proctors Pyne, Lynch & Smith (Warner Pyne); and the said cargo claimants having appeared and been heard by its proctors Bigham, Englar, Jones & Houston (John W. R. Zisgen); and due deliberation having been had,

Now, on motion of Pyne, Lynch & Smith, proctors for petitioner, it is

ORDERED that the exceptions of the petitioner to the answers of American Smelting & Refining Company, et al, claimants. to petitioner's interrogatories be and they hereby are sustained; and it is further

ORDERED that the claimants, American Smelting & Refining Company, et al, within ten days after the entry of

this order and the service of a copy thereof on their proctors file answers as fully and completely as possible to petitioner's interrogatories No. 17 and 19, and with respect to such portion, if any, as claimants are unable within said ten day period to answer, claimants designate exactly what part or portion of said interrogatories claimants can not answer within said ten day period and also state when claimants expect to be able to furnish full and complete answers, any part or portion not answered within said ten day period to be subject to the further order of this Court; and it is further

ORDERED that said claimants within said ten day period answer petitioner's Seventh Interrogatory and amend subdivisions (a) and (b) of their answers to interrogatories Nos. 1 and 4 so as to state as accurately and completely as is possible upon the basis of their present knowledge and information, every foreign law, statute, rule or regulation on which claimants rely or which claimants allege or contend was breached or violated by the petitioner and in so far as they may later obtain knowledge or information as to additional or different foreign laws, statutes, rules or regulations on which they rely or which they contend were breached or violated by the petitioner it is further ordered that they shall, within a reasonable time after acquiring such additional knowledge or information, and at all events not less than ninety days prior to commencement of trial, furnish it to petitioner by supplemental answer to these interrogatories; and it is further

ORDERED that said claimants within said ten day period answer fully and completely petitioner's interrogatories No. 8 and 10 and in said answers state fully, completely and clearly each and every custom or usage both foreign and domestic, and if foreign what port, place or country is involved, of the steamship business or trade, or the business or trade of operating ocean going vessels between foreign

and United States ports which claimants allege or contend was breached or violated by the petitioner; and it is further

ORDERED that within said ten day period said claimants answer fully and completely interrogatories Nos. 1 to 6, both inclusive, and 13 to 16, both inclusive, and in said answers state in what respects, particulars, and details claimants allege the BLACK GULL was not seaworthy, or not tight, staunch or strong, and if her alleged unseaworthiness was in her hull in what part or portion and why and if in her supplies or equipment, what supplies and equipment and why; and if claimants allege or contend that the BLACK GULL's stowage of cargo was improper, unlawful, wrongful, or dangerous stowage, in what respect and particular and why; and if it is claimed that naphthalene stowed and carried on deck was improperly, wrongfully, or unlawfully stowed because not covered, in what manner and how and with what kind, type, or material claimants allege or contend the said deck cargo of naphthalene should have been covered and stowed; and if it is claimed the petitioner failed to use due diligence to make the "BLACK GULL", seaworthy, or was negligent, in what respects, particulars and details claimants allege or contend there was failure to use due diligence and negligence; and it is further

ORDERED that claimants answer petitioner's interrogatory No. 12 and state which of them if any, made prior shipments of naphthalene cargoes on Black Diamond Steamship Corp. vessels, and that those claimants who made such shipments of naphthalene cargoes answer subdivisions (a) and (b) of said Interrogatory No. 12.

(Sd) ALEXANDER BICKS
U. S. D. J.

Dated:
February 23, 1955
New York, New York

Supplemental Answers of Claimants to Certain Interrogatories Propounded by Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

American Smelting & Refining Company and the other claimants listed in Schedule A annexed to said claimants' answer; and Wurttembergische und Badische Vereinigte Versicherungsgesellschaften A.G., supplementing the answers heretofore filed by them to the interrogatories propounded to them by petitioner, allege, upon information and belief, as follows:

1. Claimants do allege and contend that the "BLACK GULL" was not seaworthy for the voyage described in the petition, in the following respects:

(a) in that she was so loaded and stowed that she could not lawfully complete the voyage to United States ports contracted for in the bills of lading; in that she was stowed in contravention of the provisions of the Coast Guard Regulations relating to the transportation of explosives and other dangerous goods on board vessel (46 C. F. R., Part 146), because she carried bags of naphthalene stowed on deck, secured merely by manila rope netting whereas said regulations require that bagged naphthalene stowed on deck be covered or be under cover.

b) in that she was so loaded and stowed as to prevent a serious and immediate danger of damage to her and to her cargo by fire, because she carried bagged naphthalene stowed on deck, secured only by manila rope netting, which exposed said cargo of bagged naphthalene to the heat of the direct rays of the sun; to contact with sparks emanat-

ing from the vessel's funnels; to lightning; to lighted cigarettes, pipe tobacco and matches at the hands of passengers or crew; to sparks of static electricity; to sparks generated by contact of metals; and to any other source of possible ignition, contact with which might have been minimized or prevented by such covering as is contemplated by the Coast Guard Regulations hereinbefore mentioned.

c) in that she was not properly equipped and supplied to minimize or overcome the danger presented by her manner of stowage; in that she was not adequately supplied with sandboxes or other safe contrivances for the extinguishment of matches, cigarettes, cigars and pipe tobacco; in that the deck space utilized for the stowage of bagged naphthalene on deck was not covered by a deck erection nor was the stow covered with awnings or dunnaging, to ward off sources of potential ignition; in that said space was not fenced off or marked off from the passenger quarters of the vessel, nor posted with adequate warning signs forbidding passengers to enter upon or approach the vicinity of the portions of her deck space on which her deck cargo of naphthalene was stowed; and in that no fire watch was posted or maintained in the vicinity of the deck stow of bagged naphthalene to prevent its ignition or to make more certain the immediate detection of fire therein.

d) in that, by reason of the deficiencies hereinbefore mentioned, and the dangers thereby presented, her holds and other parts of the ship in which goods were stowed were not fit for their carriage and preservation.

e) in that, by reason of the foregoing deficiencies and the dangers thereby presented, she was loaded and stowed in contravention of safe and proper practices prevailing both in her ports of loading and in her intended ports of discharge, and was therefore unseaworthy; and due diligence was not exercised to make her seaworthy.

f) in that, by reason of the foregoing deficiencies and the dangers thereby presented, she was loaded and stowed in an unseaworthy manner resulting from lack of due diligence, in contravention of the "International Convention for the Unification of Certain Rules Relating to Ocean Bills of Lading", ratified by the Kingdom of The Netherlands in 1931, effective November 15, 1931, and ratified by the Kingdom of Belgium in 1930, effective June 2, 1931, both of which remained effective as to both of said sovereign states on the dates on which said vessel loaded her cargo at Rotterdam, Kingdom of The Netherlands and at Antwerp, Kingdom of Belgium and in further contravention of the Carriage of Goods by Sea Act, 46 U. S. C. sec. 1300 ff., and of the laws and regulations of the Kingdom of the Netherlands hereinafter referred to.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

2. Claimants do allege and contend that the "BLACK GULL" was not tight, staunch and strong in the respects specified in answer to the First Interrogatory. The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

3. Claimants do allege and contend that the "BLACK GULL" was not fully manned and equipped in the respects

specified in answer to the First Interrogatory; and, in addition, in that her officers and crew were ignorant of the proper method of stowing naphthalene on deck so as to protect it from the danger of fire, and of the proper measures to take to minimize or overcome such danger. The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

4. Claimants do allege and contend that petitioner failed to use due diligence to make the "BLACK GULL" seaworthy, in the following respects:

a) in that it, being a common carrier, caused or permitted bags of naphthalene to be stowed on her deck secured merely by manila rope netting, and failed to cause said naphthalene to be covered or stowed under cover, which made it impossible for the said vessel lawfully to complete the voyage contracted for in the bills of lading because such stowage was in contravention of the Coast Guard regulations;

b) in that it, being a common carrier, caused or permitted bags of naphthalene to be stowed on her deck secured only by manila rope netting, and not otherwise covered, or stowed under cover, thereby exposing said stow of bags of naphthalene to the sources of ignition mentioned in part (b) of the answer to the First Interrogatory;

c) in that it, being a common carrier, failed and omitted to supply the vessel, with the contrivances mentioned in part (c) of the answer to the First Interrogatory to minimize the danger presented by her manner of stowage; failed and omitted to provide structural erections having perma-

nent openings to the atmosphere or awnings or dunnaging to protect said stow of naphthalene from the elements and from the direct rays of the sun; failed and omitted to shut off the portion of her deck on which said bagged naphthalene was stowed from access from the passenger quarters; failed and omitted to post adequate warning signs forbidding passengers to enter upon or approach the vicinity of said stow; failed and omitted to maintain a fire watch in said vicinity to prevent ignition of the stow of bagged naphthalene or to make more certain the immediate detection of fire therein; and failed and omitted to man the vessel with officers and crew aware of the proper method of stowing naphthalene on deck and of the proper measures to take to minimize or overcome the dangers of such stowage.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

5. Claimants do allege and contend that the losses and damages to their cargo were caused or contributed to by the fault of petitioner and the "BLACK GULL" and those in charge of her, in the respects set forth in their answers to the Fourth Interrogatory.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

6. Claimants do allege and contend that the fire on the "BLACK GULL" was due to the design or neglect of

petitioner, and was caused or contributed to by the privity, knowledge and fault of petitioner, its agents, servants and employees in the respects specified in their answers to the Fourth Interrogatory. The officers, directors, agents, servants and employees of petitioner who were guilty of, or caused or contributed to, such design, neglect, privity, knowledge and fault were such of petitioner's officers, directors, agents, servants and employees as were charged with the duties in the discharge of which petitioner failed, as alleged in claimants' answers to the Fourth Interrogatory. Pending receipt of petitioner's answers to claimants' interrogatories, claimants are not in possession of knowledge or information as to their names, and cannot describe them more particularly.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

7. Claimants do allege and contend that petitioner breached and violated the statutes, rules, regulations and laws of the Kingdom of Belgium and of the Kingdom of the Netherlands in connection with the loading and stowage of the "Black Gull" and in connection with that vessel on the voyage on which the fire of July 18, 1952 occurred. The substance and contents of the statutes, rules, regulations and laws which claimants allege and contend petitioner breached and violated are those relating to shipping and to the carriage of goods and passengers which require that naphthalene, when stowed on deck, shall be stowed under cover or covered, and those which require that vessels departing from the ports of those countries shall be seaworthy, properly manned, equipped and supplied, properly

loaded and stowed, and provided with all proper, necessary, appropriate and usual safeguards against fire on board.

Claimants allege and contend that petitioner violated the provisions of the "International Convention for the Unification of Certain Rules relating to Ocean Bills of Lading" as in force in both of said Kingdoms at the time the "BLACK GULL" loaded at and sailed from their respective ports on the voyage described in the petition; and violated the provisions of the local statutes of each of said Kingdoms, which substantially embodied the provisions of said Convention. Claimants have no knowledge or information as to the citations, references, rules, regulations or laws excepting that the said Convention was signed at Brussels August 25, 1924; was ratified by the Kingdom of the Netherlands in 1931, effective November 15, 1931; and was ratified by the Kingdom of Belgium in 1930, effective June 2, 1931; that such a local statute of the Kingdom of the Netherlands was enacted in 1927; and that such a local statute of the Kingdom of Belgium was enacted November 28, 1928, effective January 22, 1929.

Claimants also allege and contend that petitioner violated the provisions of the Shipping Decree, the Shipping Regulations, and the Rules of the Inspector-General of Shipping of the Kingdom of the Netherlands. Claimants have no knowledge or information as to the citations, references, etc. excepting that reference has been made to them in the following terms:

Shipping Regulations
Appendix XVII to Shipping Decree
Articles 91 to 96 of Shipping Decree
Article 94 par. 13 of Shipping Decree
Shipping Decree, 1952

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to

and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

8. Claimants allege and contend that petitioner breached and violated customs and usages of the Kingdom of the Netherlands and of the Kingdom of Belgium and of the ports of Rotterdam and Antwerp in that petitioner caused or permitted the stowage of naphthalene on deck covered only with manila rope netting, whereas by the custom and usage of those countries and ports in relation to the carriage of naphthalene from them to United States ports it should have been protected from the elements by structural erections and from the direct rays of the sun by awnings or dunnaging; or should have been stowed under covered erections on the weather deck such as forecastle, bridge house, poop, or deck house having permanent structural openings to the atmosphere; and in that petitioner caused or permitted said vessel to sail from said ports in an unseaworthy condition in the respects specified in their answers to the First and Third Interrogatories, whereas she should have sailed therefrom seaworthy in those respects.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

10. Claimants allege and contend that petitioner breached and violated customs and usages of the steamship trade between ports of the Kingdom of the Netherlands and the Kingdom of Belgium and ports of the United States

in all of the respects specified in their answers to the Eighth Interrogatory.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

12. With the possible exceptions mentioned hereunder, none of the claimants made any shipments of naphthalene on vessels of the Black Diamond Steamship Corporation prior to the voyage described in the petition.

* * *

13 to 16, inclusive. Claimants allege and contend that petitioner, its agents, servants and employees and the master and officers of the "BLACK GULL" were at fault and negligent with respect to the loading, stowage, care and custody of their cargo on the voyage in question in the respects set out in their answers to the First, Third and Fourth Interrogatories.

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

17. With the exceptions and possible exceptions mentioned hereunder, none of the claimants had a representative, surveyor or employee on board the "BLACK GULL" while the cargo was being loaded.

The claimants as to whom there is possible exceptions are those mentioned in claimants' answers to the 12th In-

terrogatory. Claimants' proctors are continuing their efforts to obtain the information with which to answer as to these claimants, expect to have definite information within thirty days, and will furnish it when received.

* * *

19. With the exceptions and possible exceptions mentioned hereunder, none of the claimants or shippers tallied the cargo.

The possible exceptions are the claimants named in their answers to the 12th Interrogatory. Claimants' proctors are continuing their efforts to obtain the information with which to answer as to these claimants, expect to have definite information within thirty days, and will furnish it when received.

* * *

The foregoing amplifications of the answers of these claimants to the interrogatories heretofore propounded to and answered by them are based upon all of the information presently available to these claimants. Claimants reserve the right to rely upon any further information which they may be able to obtain between now and time of trial, from any source.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants,
Office & P. O. Address,
99 John Street,
New York 38, N. Y.

(Verified by John W. R. Zisgen, attorney, March 10, 1955.)

Extracts from Opening Statements

• • •

[3] The Court: All right. Who do you think has the burden of proof on the first issue?

Mr. Longley: I suppose if you are referring to cargo and carrier, I think the cargo has.

The Court: You all agree that the first [4] question to be decided is whether the fire was due to the negligence of the shipowner and carrier.

Mr. Longley: That is the primary issue.

• • •

[16] • • • the testimony here will establish that there were nine passangers carried in this midship structure. They were permitted the full reach of the ship in walking about and there is no way of telling—I assume no evidence will be offered—not by us, in any event—as to whether it was a lighted match or a cigar or cigarette butt carelessly thrown into this stow by the passengers or by the crew which started the fire, or whether it was a spark from the funnel. It was one of those things——

• • •

[85] He said that prior to becoming a nautical surveyor he had been at sea for some 20 years with the Netherlands Steamship Company working his way up, apprentice to master, and that during the last six years of that period he had served as master.

His service fell into two general trades. For 14 of his years at sea he was in the trade between Holland the Dutch East Indies, and for the remaining six he had been in the trade between Java and Bengal. He said that he had had experience with naphthalene in the five years after World War II, commencing around 1948, and that during that period he had had to supervise the stowage of naphthalene and give a certificate of proper stowage. In doing that he was acting as an employee of a company whose name he

gives, a very long Dutch name, whose business was to charter steamers and load them with goods for carriage to the United States.

The naphthalene in question he said arived at Rotterdam from Germany in barges and that on the barges it was stowed both below decks and up into the hatchways, and it was in bags.

He said that the bags that were stowed up above the level of the hatches were covered with [86] tarpaulins on those barges, and when asked, "Do you know what the purpose was of covering them with tarpaulins?" his answer was, "They are bag goods and therefore you want to keep it dry. And there is another reason, the goods is considered to be inflammable and you cover it and protect it from fire, spark, etc."

• • •

[88] Mr. Zisgen: "In your opinion how should naphthalene which is carried on deck be stowed on ocean steamers?

"A. I myself have never carried on my ship these bags of naphthalene, because that is a commodity which we never ship to the East Indies, not the raw material.

"Q. But as a nautical surveyor what is your opinion as to the way in which naphthalene in bags carried on deck in ocean steamers should be stowed? A. It must be stowed,—of course, if it is an island deck you would just have to keep the box, the ground tier, free from the deck so that water can flow underneath the cargo stowed there. Then we have to cover it up with tarpaulins just to protect it from water, rain, sea water and from eventual sparks, and maybe from just cigarettes which the people smoke and throw away.

• • •

[93] "Q. Now, in the course of the voyage the passengers were allowed on the main deck of the vessel, were they

not? A. They were never on the main deck because there was deck cargo and they could not get around there.

"Q. Are you sure of that? A. I would not say never, but they had the boat deck and bridge deck to themselves.

"Q. But they may have gone on the main deck at times; is that correct? A. That I cannot say because I have not seen it happen.

• • •

[94] "Q. What language were the signs in the cabins printed in? A. English.

"Q. What language were the signs in the alleyways in? A. English.

"Q. What language were the signs on the mast house in? [95] A. English.

• • •

"Q. Now, you had ashtrays on the tables in the dining room, had you not? A. It was not allowed to smoke in the dining room.

"Q. Where did you smoke when you smoked? A. In my cabin.

"Q. Was there a sign in your cabin just as in the other passengers' cabins? A. No.

"Q. Were you ever aft in the crew's quarters? A. Every day. It is my job to see if everything is in order.

"Q. Were there signs in the crew's quarters saying 'no smoking'? A. Not in the cabins, but in the alleyways.

"Q. In what language were they? [96] A. So far as I can remember they were in Norwegian.

"Q. You told us that passengers were not allowed to smoke in the dining saloon. Where were they allowed to smoke? A. In the cabin and in the smoking saloon.

"Q. Where was the smoking saloon? A. Next door to the dining saloon.

"Q. Can you point it out to me on Jolund Exhibit 1 for identification?"

The witness then pointed to a space labeled "Smoking Room" in the same diagram that Mr. Pyne had theretofore marked with an X for 10, the one that has "Boat Deck" underneath.

"Q. And on this voyage some passengers did smoke, did they not? A. I cannot say, but I take it for granted that there were some amongst them that smoked."

• • •

[97] JOHANNES ADRINUS DRIESPRONG, whose deposition was taken at Rotterdam on August 9, 1955. At page 2:

• • •

MR. J. DRIESPRONG (passenger claimant).

Cross-examination by Mr. Zisgen:

[101] "Q. Do you remember the nationality of any of the other passengers who were with you on the Black Gull? A. Yes.

"Q. Can you tell me so far as you recall what the facts were as to that? [102] A. The Dutch passengers were my wife, my daughter and myself, Mr. de Nobel—don't know his Christian name—and Mr. Spanderman. They were Dutch. As to the Leesons, I think Mr. Leeson is Irish; Mrs. Leeson is Belgian. There was a German young fellow—what was his name now—and one Swiss boy—one German boy. We did not see much of them—well, we saw them but did not speak to them—I don't know their names really.

"Q. So there were: the three of you: you yourself, your wife and daughter, Mr. de Nobel and Mr. Spanderman, who were Dutch; there was Mr. Leeson who was British or Irish; there was Mrs. Leeson, who was Belgian—— A. I think so.

"Q. —there was one young German and one young Swiss. That makes up the nine passengers. A. Yes.

• • •

Deposition of Jacobus de Nobel
Deposition of Peter Spanderman

[103] * * * deposition of Mr. de Nobel, also a passenger.

* * *

"Q. Mr. de Nobel, on or about July 18, 1952, were you a passenger on the SS. Black Gull? A. Yes, I was."

* * *

"Q. During the course of this voyage, Mr. de Nobel, did you become generally familiar with the vessel? A. Well, I only stopped in the neighborhood of [104] my cabin. I never went down to the stern or aft of the ship.

"Q. What decks did you walk on, if any? A. On the boat decks. Well, and I was sitting in the smoking room and just enjoyed myself with talks with all the passengers."

* * *

"Q. Did you go on the maindeck? A. No, I never have been on the maindeck."

* * *

[105] "Q. Do you smoke, Mr. de Nobel? A. Yes, I smoke a lot.

"Q. What do you smoke? A. Nearly always cigarettes.

"Q. Did you smoke in your cabin during the course of the voyage?

* * *

[106] "Q. Did you ever see any members of the crew smoking? A. No, I did not see any."

* * *

* * * deposition of Mr. Spanderman, * * * a passenger, * * *

* * *

[109] "Q. As to the maindeck where the cargo was stowed, in the stern of the vessel, did you ever see any members of the crew smoking in that area? A. I never saw anyone smoking on the after deck."

* * *

Deposition of Peter Spanderman

Cross-examination by Mr. Zisgen.

[110] "Q. Mr. Spanderman, you told us that you had seen cigars and cigarettes thrown down around the bridge on the Black Gull. Can you tell us when you saw that?"

Mr. Pyne: May I call your attention now, your Honor, to this objection—that question clearly says plural—"cigars and cigarettes." If you turn back to what the witness clearly stated before, he saw a cigar and a cigarette—not the plural, so I will object to that question.

The Court: Well, did you object at the time?

Mr. Pyne: I beg your pardon?

The Court: Did you object at the time?

Mr. Pyne: No.

The Court: Then you think that is an objection as to the form?

Mr. Pyne: All right.

Mr. Zisgen: The answer to that question was: "Every day."

Mr. Pyne: May I also have the record show, your Honor, with respect to all of these passengers, of whom portions of their testimony or depositions are being read, that they were all claimants in the limitation proceeding.

• • •

[111] Mr. Pyne: Just a portion of the questions and answers asked of the witness de Nobel. At page 40—this is on his direct examination, your Honor:

"Q. Mr. de Nobel, immediately prior to the time of this fire that occurred, where were you? [112] A. Well, we had had the captain's dinner, and let's say at 10:30 I went up to my room and before undressing myself I went out because my room was very near to the outside, to the gangway outside. And so I may have been for five or ten minutes just

on the deck, just to have a bit of fresh air. Well, and then I went in. In the meantime Mr. Spanderman had undressed himself and was laying on his bed. And then I started to undress myself and I had just my jacket taken out, when the stewardess came up and said to us: gentlemen"—and then he continues with data concerning the fire.

• • •

"Q. • • • Mr. Spanderman, this is also on direct, your Honor— "Where were you immediately prior to the time you were notified that there was a fire? A. I came from the smoking room going up to my cabin, but just before I went to bed I looked out at the sea and then I went to my cabin, where I undressed. And I had just finished undressing when the door was thrown open and the stewardess entered and [112a] said: "Keep it easy, get dressed, the ship is in flame."

• • •

[113] Deposition • • • of JAN P. MULLER (passenger called by petitioner).

• • •

"Q. Now, in July, 1952, were you on board the Steamship Black Gull on a voyage between Europe and the United States, on which a fire occurred on that vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board here? A. Oh, just as a passenger."

• • •

[114] "Q. If you saw anyone smoking on the voyage, it must have been outside of your cabin? A. Yes. Oh, yes.

"Q. And outside of their cabin? A. Yes."

• • •

"Q. But you don't recall definitely whether or not you did, is that right? [115] A. That's r[illegible]. I mean I couldn't name anybody exactly, when and how."

• • •

"Q. Were you warned at that time not to smoke on the voyage? A. I don't recall. I don't think so. I mean, the one thing I can remember pertaining to smoking is that sign in my cabin.

"Q. That is the only mention of it that you recall? A. Yes."

Then at page 14:

"Q. Did you learn before the"——

The Court: What did he say about the sign in his cabin?

Mr. Zisgen: He had previously testified, your Honor, on direct examination, that there was a sign in his cabin——

• • •

[116] "Q. Now, while you were on board that vessel, and prior to the time that the fire occurred, did you see or receive any requests or suggestions or instructions in connection with smoking? A. Yes.

"Q. Now what type of data or matter was it that you saw or received? A. Well, I remember a sign that was in my cabin, and which said something about smoking.

"Q. Now, where in your cabin was the sign? A. I believe it was right on the wall over the table, a small table.

"Q. Can you recall what the content—or what was said on the sign, the substance? A. It said in the sense of 'Don't throw cigarettes or butts or burning cigarettes away, or overboard.'"

• • •

[118] "Q. What sort of weather did you have on the voyage? A. I believe it was good weather."

• • •

Deposition of Thomas D. Leeson

[120] * * * Deposition of THOMAS D. LEESON

* * *

[121] "Q. Tell us generally where you would walk about on this ship? A. The deck, coming out from our cabin aft. We could walk there up through the dining room, and higher up, and then, on the main—shall we call it the promenade deck, which was the roof of our cabin. The roofs of our cabin.

"Q. When you were walking about, did you see other people walking on the decks of the ship? A. The other passengers.

"Q. Passengers or crew? A. Well, we—we saw crew.

* * *

[122] "Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the the main deck.

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

* * *

"Q. Tell us, if you can, whether any of these people you saw walking on these decks were carrying anything? [123] A. It's very difficult. I couldn't tell you that."

* * *

"Q. Did you notice any of them smoking? A. No. You mean, the crew?

"Q. Crew or passengers. A. Passengers—we smoked on our own deck.

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any.

* * *

[125] "Q. Then as you look down from the areaway you walked normally, which we have marked here with the word 'roof'? A. Yes, that is the roof of our cabin.

"Q. That is the promenade deck? A. That is right.

'Q. As you looked down you could see the stowage on the port side? A. Yes.

"Q. Did I understand you to say it was a continuous stow largely of these bags of naphthalene? A. Yes, continuous to more or less within a short distance of the crew's quarters."

• • •

[126] • • • naphthalene extended about the height of the bulwarks? A. Yes.

"Q. Inboard within two or three feet of the hatch coaming? A. Yes.

"Q. As you saw it, it was approximately a solid stow from forward toward the aft on the port side? A. Yes, if you call sacks, ordinary gunny sacks filled with loose crystals, a solid stow, then I am with you.

"Q. I am not talking of anything like brick, but the bags were stowed closely together? A. They were stowed closely together.

• • •

[128] "Q. And the other passengers, you saw them smoking up there?"

That, your Honor, refers to the upper decks and these passengers' housing amidships. A. Yes, I suppose I did, but it wasn't my affair——

"Q. Of course, but you did see them?"

Mr. Pyne then objected, "Let the witness answer, Mr. Longley." And the reporter read the last question and answer. Then the witness gave the answer:

A. Yes, I saw passengers smoking."

• • •

[129] "Q. The smell of naphthalene, I gather from what you said, was very marked when you went on board at Rotterdam, was it not? A. Well, when we got on board

at Rotterdam, after the time necessary to settle into our cabins, then—we began to take noses of this smell.

"Q. Can you tell us during the voyage, as you experienced the hot weather, whether the smell of the naphthalene increased or decreased, or whether it remained the same? A. I have no way of saying. I have no way of answering that question. I have no appreciation of the intensity of the smell of the naphthalene, * * *

* * *

[130] "Q. Explain, please, how you were able to testify as to the appearance of the naphthalene being in crystal form. A. Simply because some of the gunnysacks were broken.

* * *

"Q. Was there exposed naphthalene on the deck from any broken bags or part of the deck where the crew walked? A. To the best of my recollection, that's where I saw the broken sacks, right at the very beginning."

* * *

[131] "Q. Did you notice anyone sweeping or picking up these loose crystals? A. Well, they were swept up in the early [132] morning, I suppose. The crew cleaned the quarters, cleaned the decks in ~~the early~~ morning. But I won't say I actually saw them sweeping up those few crystals.

* * *

"Q. On how many occasions did you notice loose naphthalene crystals on the main deck? A. I only noticed that right at the beginning, the first or second day out, when we were getting our bearings, looking at everything, and we noticed then that there were slopping over in a couple of places—of the crystal—but to say that we saw them day after day, I can't go that far. But there was a slopping out of naphthalene, naked crystals, onto the steel decks."

* * *

Deposition of Mrs. Jeanne Leeson

[133] "Q. Can you give us some idea of what we are talking about? Was this a handful or a bucketful? Was it a large quantity or a small quantity? A. Visible small quantity in a couple of places. Visible small quantities."

• • •

[134] Then MRS. JEANNE LEESON • • •

"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner."

Mr. [illegible]ne interjected, "In the dining room?"

The witness answered: "In the dining room or the lounge."

[135] "Q. That is where you saw them smoke? A. Yes."

• • •

"Q. Did you at any time ever notice any of the crew smoking on the main decks? A. No. I didn't take any notice of it.

"Q. Did you notice any of the officers smoking on the main decks? A. No."

• • •

[137] "Q. When you walked up on your deck you looked down and saw the naphthalene below? A. Yes.

"Q. And as you looked down on it you could see a solid stow of bags from the bulwarks into an area two or three feet away from the hatch coamings? A. Yes.

• • •

[138] "Q. As you looked down during the course of the voyage, did you or did you not see any spillage of the crystals? A. Yes.

"Q. Where did you see that spillage? A. On this little gangway that was left.

• • •

Deposition of Mrs. Jeanne Leeson

Mr. Pyne: Continuing on there:

"Q. How many times did you see this spillage? [139] A. Well, a couple of times. We didn't take any more notice of it.

"Q. Did the crew walk on this spillage of crystals? A. No. They kept their decks fairly clean."

• • •

"Q. What would you say was the approximate temperature of the weather you experienced during the voyage? Was it very hot? A. Yes. It was very hot.

"Q. You didn't have occasion to look at a thermometer, I suppose? A. We saw no thermometer • • •

• • •

"Q. Could you give us some estimate? Was it 100 degrees? What would you say? A. Well, being at sea, it would be less than on land • • •

• • •

[140] "Q. Mrs. Leeson, between the time you boarded the ship in Rotterdam on about July 10th, at the time of the fire, on or about July 18th, was the ship moving all the time? A. Oh, no. We had three stoppages in 24 hours. The ship lay still.

"Q. Do you remember the dates, approximately, when the ship stopped? A. About halfway, the 14th, the 15th.

"Q. Did these stoppages all take place in the same day? [141] A. Within the same 24 hours. We also had quite a lot of shorts on board.

"Q. What do you mean by 'shorts'? A. Well, the lights would go out, and bells would ring when they didn't have to ring out and sometimes when we rang for the steward it was definitely something wrong with the electric wiring, or whatever it was.

"Q. Did the lights work satisfactorily in your cabin? A. No. That's how we know.

Deposition of Dr. Jules Aeby

"Q. Did you make a complaint to anybody about it? A. Yes, The steward.

"Q. Whom did you tell about it? A. The steward. And he came back and did something and then he was going to look into the matter. But it never got remedied properly, although he tried his best to do something."

• • •

[159] Dr. Jules Aeby.

"Q. And did you not define organic compounds as substances capable of burning when fire was applied to them? A. Exactly my words.

"Q. Now you also defined the term inflammable in your 1910 and 1922 editions, did you not? A. Yes.

"Q. And did you not define inflammable as substances which at more or less high temperature give off gases which in the presence of a naked flame, ignite or explode? You may look at the books, if you wish, Dr. Aeby. A. Let me interrupt you a minute. You are speaking about my two first editions.

"Q. That is correct, sir. A. But when I made a new edition it is always [160] the last edition that is in my opinion the best I knew at that time.

"Q. I shall come to that—— A. I do not know the previous editions but there may be contradictions when I after offered suggestions, made changes. For the time being it is the 1955 edition which is just out of press. That is now the book that I look at first. I may look at the others occasionally for something for instance in the 1938 edition, the introduction was much more detailed. But I found that after all my clients were practical people. They only wanted to know one thing, is there danger or not. And the success of my book, because it was a success and still is, resides precisely in the question that I put myself into the place of my clients and I can do that so well because my brother was and still

is the chief of the Red Star which still exists but which is now a small concern, it is really the Holland-America Line. So I saw the two views and still see them: the one who looks after the freight and the technical man who has to help the freight man.

"Q. And you are a technical man? A. I am a technical man.

• • •

[163] "Q. Now in the first and third editions, the 1910 and 1938 editions, you listed only such goods as were dangerous goods within your definition of dangerous goods, did you not? A. To answer that question, I should look at all the items that are listed, because there may be some in it that are not particularly dangerous.

"Q. I say, Dr. Aeby, dangerous within your definition as dangerous goods as given in these two books. A. You see, Mr. Zisgen, as I said before I wanted before all to make a practical book and it is quite possible that in the two first editions I have put in certain commodities because I knew that my friends would ask me about it. But it may be that some are there not particularly dangerous or perhaps not even dangerous, but that I put them in because I knew that [164] the users of my book wanted information about certain articles. It is not a scientific book it is a practical book and I tried at the beginning and later even as now the last edition is not 'Dangerous Goods' any more but it is 'Dangerous Goods and Others' because it is practically impossible to put all the goods that are in commerce to put them in the book. There are thousands of commodities, so I tried to only mention those that are in general use. But it does not necessarily mean that when they stand in my book that they are. This is well explained in the last edition 'what does dangerous goods mean?' Now that term has been adopted from the very beginning by the Board of Trade first and by you people in America and I took the same title. But nowadays as I said in the last edition I would rather say that I

give characteristics of as many products as possible which are known and which are regularly transported because the people who buy my book want to have the information about it and they asked nothing better but to find there is no danger.

[165] "Q. When you say 'last edition,' Dr. Aeby, you mean your 1955 edition? A. Which came out in June of this year.

"Q. Did you not in your 1910 edition, limit yourself to the mention of dangerous commodities. I show you page 42 of Libelants' Exhibit 3. A. I have already answered this question. To give you an answer to that I ought to go back from 1 to 383 and say one, two are dangerous, three and four may be semi dangerous, and five and six may be just a commodity that I wish to give some information about without characterizing it as dangerous or hazardous. I cannot answer that question unless you let me take the one after the other. I find here chlorates, chlorites . . . all the chlorates are dangerous. That is only an example. To answer your question whether all of the articles in the 1910 edition are dangerous, I wish to take them one after the other and say dangerous, semi-dangerous, or hardly dangerous.

"Q. It is a question of degree, is that correct? A. It is especially from a practical standpoint a question of giving information, where most likely the people who buy my book want information."

• • •

[170] • • • "Q. Then in June, 1955, you published your fourth edition of your book and I show you Libelants' Exhibit No. 5 for identification. That is a copy of your fourth edition, is it not, sir? A. Yes, that's right. Naphthalene, page 388."

• • •

"Q. Again you mentioned naphthalene in your fourth edition, did you not? A. I did.

"Q. And again you recommended that if stowed on deck it be protected from the rays of the sun? A. Yes, with the only difference that I said preferably. One word more: preferably covered.

[171] "Q. And that preference in your recommendation was because of the danger that you mentioned a few moments ago, was it not? A. Yes.

"Q. And since 1938 at least and up until the time you published your fourth edition in June of this year you have felt it preferable that if naphthalene is stowed on deck it be covered and protected from the rays of the sun, is that correct? A. Yes.

"Q. And you have felt that because of the dangers that you have told us about? A. Yes."

• • •

"Q. Dr. Aeby, you have been consulted by the Belgian courts as an expert from time to time have you not? A. Especially by the Tribunal de Commerce, not the general court.

"Q. But by the Tribunal de Commerce? A. Yes.

"Q. Here in Antwerp? A. Yes.

"Q. And has that happened on numerous occasions? [172] A. What do you call numerous?

"Q. You tell me what you call numerous? A. What I call numerous?

"Q. Yes. A. Well, twice a week.

"Q. Have you been consulted that often? A. No, no, I have not been consulted for quite a number of years.

"Q. Prior to that number of years, were you consulted several times in a year? A. Before that time?

"Q. Yes. A. I would have to look into my fees account and see how many fees I got.

"Q. You don't recall? A. I was consulted. But how often and when? I could make you a statistic if that is useful.

Deposition of Carl van den Bosch

"Q. Can you tell me, sir, how many copies of your third edition were printed? A. The third edition? 3000."

• • •

[182] CARL VAN DEN BOSCH—

"Q. Mr. van den Bosch, has Belgium or has it not enacted any local legislation similar in terms to The Hague rules? A. Belgium has enacted a law similar to The Hague Rules which last was voted on the 28th of November, 1928, and introduced into the Belgian Code of Commerce, Book II, under article 91.

"Q. Do you have a copy of that statute with you? A. I have a copy of the statute with me and I will show you."

It was then stipulated that a photostatic copy of that might be substituted. I have it here and I should like to offer it.

(Marked Libelants' Exhibit 23.)

• • •

"Q. Mr. van den Bosch, can you tell us what, if any, differences there are between the rules known as The Hague Convention and the provision of article 91 of the Belgian Maritime Code. A. The only differenc refers to the scope of application of the rules, whereas the convention is [183] only applicable to contracts of carriage covered by a bill of lading made in one of the contracting states, while the domestic Belgian law makes the rules applicable to every bill of lading covering a carriage bound to a Belgian or a Congolese harbor or starting from a Belgian or Congolese port."

• • •

[186] "Q. Do you know of any judicial decisions interpreting this article 59 of the Maritime law, Mr. van den Bosch? A. I have not taken with me judgments applicating the principles of article 59, but I may ascertain that the

whole Belgian jurisprudence is based on that provision, whereas there are hundreds of decisions by the Belgian courts. This can be verified by reading the 'Pasicrisie' which is a general review of Belgian jurisprudence and by more specialized reviews, such as the 'Jurisprudence du Port d'Anvers,' of which two or three volumes are available for you.

"Q. Can you refer us specifically to any portion of the volumes available here today which bear on article 59 or article 66? A. I am able to refer to volume 1880 of Jurisprudence d'Anvers, page 342, where a judgment of the commercial court of Antwerp is published in the case of Kennedy Hunter v. Cpt. Van Dort.

"I am also able to refer to the volume 1886 of Jurisprudence du Port d'Anvers, page 149.

"I am also able to refer to volume 1922 of [187] Jurisprudence du Port d'Anvers, page 180 to 185."

• • •

[191] • • • question asked by Mr. Stonebridge of Mr. van den Bosch, this Belgian lawyer, on page 14:

"Q. Does any law, royal decree or regulation of Belgium in effect in July 1952 or in effect today contain any specific reference to the stowage of naphthalene? A. As far as I know there is not."

• • •

"Q. Then, if I understand you correctly, Mr. Van den Bosch, it comes down to this, that the Belgian courts in determining or deciding whether a stowage is proper, take into consideration opinions of experts, including chemists, customs and practices in the steamship business and the opinion of people experienced in the stevedoring and steamship business, and, also at times the opinions of chemists who are experienced in the transportation business? A.

You are correct, sir, but I should add that [192] the courts also refer to books written by specialists on those subjects and that they are not bound by the advice so given.

"Q. That is, the courts use their own judgment in each particular case and they may or may not accept the experience, the advice, the opinion of any one particular, expert or experts, or any one book or books for publication. Is that correct? A. Well, the matter must of course be considered as a matter of common sense. That means that in general and in fact the courts will accept the advice of authoritative experts, unless it can be proven that such advice is wrong and that the expert made a mistake.

"Q. Is not this the situation, that the court weighs the evidence in each particular case and makes its decision? A. That is right, sir."

• • •

Mr. Zisgen: The next deposition, your Honor, is that of a Dutch lawyer, whose deposition was taken at Rotterdam on August 10th—DR. A. C. W. BEERMAN.

• • •

Mr. Stonebridge: Your Honor, before Mr. Zisgen refers to the deposition of Dr. Beerman, I would like to call the Court's attention to the fact that much [193] of the material contained in there appears to me—and I believe also to Mr. Pyne, to be hearsay and clearly inadmissible. In taking testimony of other Dutch lawyers, Mr. Pyne was forced to go into hearsay also to rebut the hearsay contained in Dr. Beerman's testimony.

On my part, I am willing to waive any objection to any hearsay testimony in Mr. Beerman's testimony provided Mr. Zisgen agrees now that he will permit us in introducing the testimony of our two Dutch lawyers to follow through in the same manner, that is, that he will waive objection to hearsay.

Mr. Pyne: I am in the same position.

Mr. Longley: I don't think we can make blanket agreements on any such things. I don't know what my brother is talking about. We have to deal with this as we go along.

Mr. Pyne: It seems to me you haven't read the depositions, Mr. Longley. We are specifically talking about a letter produced by this Dr. Beerman, purporting to state certain things, a letter from a third party not called as a witness.

Now, in response to that, from the same office, I may say, we have other letters which are [194] in direct conflict with the letter in question, and if we are to permit the first letter to be introduced, which we think is clearly hearsay and clearly inadmissible, we don't want to be in a position of waiving an objection to that letter and then being confronted later with an objection on our part or to our testimony which is clearly stated to be in rebuttal of that very letter.

The Court: That seems to be specific enough, Mr. Zisgen.

• • •

[198] "Q. Is the Kingdom of the Netherlands a party to the International Convention on Rules relating to Bills of Lading, otherwise known as the Hague Rules Convention? A. The Hague Rules have so far not been incorporated in our maritime law, but the principles of the Hague Rules are also basic for our maritime law. You can put it in this way that the Hague Rules have a wider application in Holland, because the rules about liability laid down in the Hague Rules are also applicable to charter parties.

"Q. Do I understand that the Kingdom of the Netherlands has never made itself a party to the Hague Rules? A. It has signed the Convention but it was never [199] ratified.

"Q. Was that true in 1952? A. Yes.

"Q. The statement you made a moment ago about the principles of maritime law in the Kingdom of the Netherlands is also true as of 1952? A. Certainly.

• • •

[206] "Q. That is a translation of the regulations to which you have referred? A. Yes. I can give you as an exhibit a letter of the Inspector General of Shipping."

Mr. Pyne: Now, here, your Honor, is the part that we objected to. He produced a letter from this third party, the Inspector General. It is that letter, quoted in the translation and the part above which we say is the hearsay. If that letter is to go in, we have met it, we feel absolutely certain, quite effectively with similar data from the same source.

If one goes in, we have no objection to it going in provided we are not later going to be met with an objection of having waived this.

The Court: Is it your position that it is not hearsay?

• • •

[208] The Court: I am forced to disagree with you and exclude it.

Mr. Zisgen: Your Honor mentioned unless the person who wrote the letter was in a position to issue a decree. Now there is, or will be, testimony here that that person is in that position. I don't think it is a matter that your Honor can rule on without hearing something more here.

The Court: All right, I certainly want to hear all there is to the subject. As I understand it, this is something which was issued after the accident.

• • •

[209] Mr. Zisgen: * * * After all, I may not be familiar with every word in this book (indicating) but

if I am asked after an event what was the law at the time of the event, I see nothing wrong in going and looking it up to see what it was at that time.

The Court: Certainly not. If you testify to that, and your opponent has an opportunity to cross-examine you, we will take your statement as to what was in effect at that time.

Mr. Zisgen: Yes.

The Court: And that we do not have in the case of this inquiry.

Mr. Stonebridge: Your Honor, I seriously question Mr. Zisgen's statement that the signer of that letter was authorized to issue royal decrees or regulations.

The Court: It does not make any difference, because the letter was signed after the accident happened anyway, and would not be in effect at the time.

[210] Mr. Pyne: It is not signed by the Inspector General but rather by a subordinate in his office.

• • •

The Court: • • • For the present I have ruled it is hearsay and inadmissible.

• • •

[213] Mr. Pyne asked: "What is the date of the letter? A. July 30th, 1954.

"Q. And to whom is it addressed? A. To John Hudig & Son, Lloyd's Agents."

• • •

[216] "Q. You mentioned a revision of the Shipping Law at the end of 1952. A. Of the Shipping Ordinance.

"Q. And you mentioned a requirement in that revision of the Shipping Ordinance. Can you give us the specific

eference to the provision that you mentioned? [217] A. referred to art. 99 paragraph 13 of the Shipping Ordiance of the 31st of December 1952, published in the Govrnment Gazette Nr 679.

"Q. Do you have with you a copy of the 1952 revision o which you have just referred? A. In the edition Schuurnan & Jordens which I have quoted already, of 1954."

• • •

[221] Mr. Stonebridge: I would like to read my cross examination of the witness, your Honor.

• • •

Mr. Stonebridge:

"Q. Summarizing portions of your testimony, am I corect in my understanding that 1) the Netherlands signed ut never ratified the Hague Rules Convention? A. That s true.

"Q. 2) that the second book of the Commercial [222] Code of 1927 and the Shipping Law of 1909 together with the Shipping Ordinances issued pursuant thereto constitute the main body or basic shipping law in the Netherlands? A. As regards the technical side, safety, etc., the Shipping Law has to be distinguished from our commercial maritime code. Beerman Exhibit 1 contains the maritime law with respect to contracts of carriage, charter parties, bills of lading, collisions, etc., whereas the Shipping Law which I quoted is the law which was promulgated in 1909 in order to promote the safety of ships, their people on board and their cargoes. The Shipping Law inaugurated the system of controls by the Shipping Inspections, it deals with lights, lifeboats, boilers, all kinds of loading gear, special requirements of safety for passenger ships, etc.

• • •

[223] "Q. Is it correctly understood from what you said that the harbor masters have no control or no direct

interest in the safety on the harbor with respect to goods which may be carried or may not be carried? [224] A. That they have no control whatsoever with respect to the safety of goods is perhaps somewhat exaggerated. The harbor master may exercise a certain control in respect of the local regulations which are in force to prevent fires in the docks, in the sheds. But as I have said before it is not the task of the harbor master to control the stowage on board ships.

• • •

[228] Mr. Pyne: Just before the recess, your Honor, Mr. Stonebridge read from some of his cross-examination of Mr. Beerman, the Dutch lawyer.

May I read from parts of my cross-examination?

The Court: Yes, Mr. Pyne.

Mr. Pyne: Page 24:

"Q. Did you prior to July 18th, 1952, make any enquiries or make study with respect to the stowage of naphthalene? A. No.

"Q. When for the first time, as best you can recall it, by month and date, did you first make any enquiries or any study with respect to the stowage of naphthalene?"

• • •

[229] A. I could not say. I have so many questions. I have so many conferences. I give advices on the telephone, in writing.

"Q. You know or you have been told of the Black Gull fire involving naphthalene, which occurred at July 18th, 1952. You have heard that was the date. What I am asking you is whether prior to the time you first heard of the Black Gull fire you made any enquiry anywhere or investigation concerning the stowage of naphthalene. A. I don't know when the question was put to me whether the Black Gull was mentioned or not.

Deposition of Dr. Sjur Brackhus

"Q. But you do know that it was subsequent to the Black Gull fire? A. Yes.

• • •

[233] • • • deposition of Dr. Braekhus, a Norwegian attorney, called as a witness by the petitioner at Oslo. • • • question by Mr. Pyne:

"Q. • • • What is your occupation? A. I am professor of law at the University, Oslo.

• • •

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years."

[234] He then went along to describe his legal career, the degrees that he had as Doctor of Law, and he specified that he had served as lecturer in law and had sat as a judge of the Court of Appeals of Oslo on several occasions over a period of one and a half years.

And at page 54 he was asked as of the time June and July, 1952:

"Q. Was there at the times stated any such law, rule or regulation which mentioned or referred to that chemical product"—meaning vinyl cyanide. A. There were not any special rules concerning that product, but as vinyl cyanide is an inflammable substance, the general rules concerning inflammable substances will apply.

"Q. Now, will you tell us and identify for us what that general rule is to which you refer, first identifying it and then telling us exactly what its full content is? A. The basic rules are found in Norwegian Statute of 1903, 9th June, governing the public supervision of the seaworthiness of vessels (Section 72). I have the Norwegian text here

and there has been made a translation. I will read the translation:

[235] "'Specially inflammable goods such as ether (naphtha) and other liquids containing ether, carbon disulphide' "—and he goes on naming several other liquids, your Honor—"'whose flash point is below 22 degrees Centigrade (Celcius) at a barometrical reading of 760 millimeters, tested in the way prescribed by the Ministry, must, in passenger vessels be carried on deck only, and in strong containers. If in other ships, such liquids are to be carried below deck, the vessel must either be arranged as a tanker, or the liquid must be carried in strong gasproof containers which must be efficiently protected. Before specified regulations for such carriage have been issued, such cargo must not be carried below deck in ordinary vessels. All crew cabins must in this case be placed on the upper deck.' "

That is the end of this quotation. Then he goes on:

"Then there are issued regulations governing the carriage of highly inflammable substances in ships not holding a passenger certificate, [235a] of September 16th, 1908. In Section 2 there is a definition of highly inflammable substances, practically identical with the Statute, but perhaps I should refer to that as well?"

And it was agreed then that we should give the text of that to the stenographer to copy. Now, what she copied reads:

[236] "Section 2. As highly inflammable substances shall be considered: ether (naphtha) and other liquids containing ether"—and he names several others—"in quantities exceeding 1000 kilograms

when the 'flash point' of the substance is below 22 deg. Celsius (centigrade) at a barometer reading of 760 mm. tested in the manner prescribed by the Ministry. Until further notice the tests shall be carried out as prescribed by the Royal Decree of November 1, 1890 in 'Regulations governing the procedure when examining the inflammability of mineral lamp oils by means of the Abel petroleum tester' or in a similar manner.

"Section 19"——

that contains the rule concerning carriage of inflammable substances as deck cargo—and he read that in English:

"Highly inflammable substances may be carried as deck cargo when contained in vats or cans as mentioned in Sec. 15. They must be placed at a sage distance from any companion-way, or other opening into the deck, cabins or engine-room, and must be properly stowed, and securely [237] lashed. Smoking is prohibited in the neighbourhood of the places where such substances are stowed. When loading or unloading such substances care must be taken that no danger can be caused by fire or sparks from engine, funnel, lights, etc."

• • •

"Section 15 describes what sort of packing should be used. I think these Sections are those which are of interest here.

"Section 15: When carried below deck in ships which are not arranged as tankers, highly inflammable substances must be kept in:

"1. Solid, cylinder shaped barrels" which are further described there.

"2. Strongly made steel cans"—further described.

"3. Strongly made cans made from tinplate," which are also further described.

"Vats and cans must not be completely full." and then he says that those are all the rules and regulations which pertain to the matters inquired about.

• • •

[238] "Q. Norway is a party to the International Convention relating to rules for Bills of Lading, known as the Hague rules, is it not? A. Yes.

"Q. And it is also a party to the International Convention for the safety of life at sea, signed in London in 1929? A. Yes.

"Q. And that was true as to both Conventions in June and July, 1952? A. Yes.

"Q. It is also now a party to the International Convention for the safety of life at sea signed at London in 1948, is it not? A. Yes.

"Q. But that Convention did not become effective as to Norway until some time subsequent to July, 1952? A. That is right."

• • •

[240] "Q. You mentioned a Norwegian Carriage of Goods By Sea Act. That, I take it, is a Norwegian Statute similar in terms to the Hague Rules. Is that correct? A. That is correct.

"Q. Does it have any wider application than the Hague Rules? A. No, it is applicable on all bills of lading. According to Section 9 of that Statute of the Norwegian Carriage of Goods by Sea Act, February 4th, 1938, it is applicable on all bills of lading issued in Norway for outward cargo, and for all bills of lading for inward cargo from countries which have ratified the Bills of Lading Convention, and then there is a [241] separate section for Scandinavian trade, which I suppose is not of interest here.

Deposition of Dr. Sjur Braekhus

"Q. Doctor, there is nothing in the law of Norway which relieves Norwegian vessels and Norwegian carriers of obligations imposed upon them by the laws of foreign states into whose waters they trade, is there? A. There is no special rules."

• • •

"Q. In the absence of specific rules relating to the carriage and stowage of particular kinds of goods, to what sources of information do the Norwegian Courts look to determine whether the loading and stowage of such goods is careful or is negligent? A. I suppose they would turn to expert witnesses.

"Q. Is there any other source to which they customarily turn? A. They would use the decisions of other Courts and literature.

"Q. What do you mean by literature? A. Technical, chemical and so on. They could use every source of information.

"Q. And would that include literature, whether in the form of regulations or laws or not, of other countries as well as of Norway? [242] A. Yes, of course, if it could serve as an example. It would not be binding."

Skipping a question and answer, on page 64:

"Q. The fact that a particular commodity is not mentioned by name in any regulations concerning loading or stowage does not in Norwegian law relieve the carrier of its obligation to load and stow that cargo carefully, does it? A. No, it does not.

"Q. Naphthalene is inflammable, is it not? A. Yes."

• • •

Deposition of Alfons Spiessens. • • • Chief checker, who was produced by the attorneys for Black Diamond Steamship Corporation for examination on discovery.

• • •

Deposition of Peter Ras
Deposition of Pedrick D. Herlofsen

[245] * * * Mr. Peter Ras, who was examined at Rotterdam on August 10, 1955.

Mr. Ras testified that he was a nautical surveyor employed by John Hudig & Son, Lloyd's Agents at Rotterdam. He described some experience as an officer sailing at sea prior to becoming a nautical surveyor, and then testified that he had been the nautical surveyor who surveyed a shipment of naphthalene which has sustained damage by fire on the steamship Norwalk Victory at Rotterdam in September, 1948.

He testified that in the usual course of his business as a nautical surveyor he had made a report of his findings as a result of that survey, and the original report of course was forwarded to the applicant for the survey, the copy was found in a book and we marked for identification at that time a typed copy of it, which I have here, and which I will offer in evidence.

(Marked Libelants' Exhibit 39.)

* * *

[246] * * * Deposition, of Pedrick D. Herlofsen.

* * *

"Q. Mr. Herlofsen, where do you reside? A. Oslo.

"Q. And what is your occupation, Mr. Herlofsen? A. I am shipowner.

"Q. And as a shipowner, do you have an association or connection with any particular firm, [247] corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is?

* * *

Deposition of Pedrick D. Herlofsen

"Q. What, please, is the type of business that is done by that company? A. That is, in short, shipowning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

• • •

[248] "A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co's office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, by laws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the 'Black Gull', who the owner of that vessel was in June and July, 1952? A. That was Skibs A/S Jolund registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the Board, and since 1953 I have been Chairman of the Board.

"Q. And when you say Board, are you referring [249] to the Board of Directors of that vessel owned by that company that you mentioned, that limited liability company of Moss? A. Yes."

• • •

[251] "Q. Can and will you tell us, Mr. Herlofsen, you have already having stated that Sigurd Herlofsen selects or engages or appoints, rather, the members of the crew, can you tell us what the system of Sigurd Herlofsen is, and was particularly in June and July and prior to that

in connection with the selection of officers and crew and their engagement or appointment? A. We have our own Crew Department, which at that time was headed by the head of our Maritime [252] Department. That man employs all the captains and deck officers, while the Technical Department employed all the engine staff. With regard to the ordinary crew, they were more or less selected by an assistant in the Crew Department.

"Q. Now you have mentioned the man who selects the Deck officers. Who was that man? A. That was Captain Wellton.

"Q. Is he presently employed by Sigurd Herlofsen? A. He is retired.

"Q. And at the time in June and July, 1952, did Captain Wellton have any particular title here in your organization of Sigurd Herlofsen & Co.?"

• • •

"The literal translation is 'Inspector.' Being the Shipowners' Surveyor, he could be called a Marine Superintendent.

"Q. Did Sigurd Herlofsen & Co., or did it not, in connection with the officers, master and other deck officers, engineers and other members of the crew, follow the system which you have just outlined in so far as concerned the officers and crew who were serving on the Black Gull in June and July 1952? A. Yes, we did."

• • •

[253] "Q. Well then, I will again, to make sure we are straightening the record out, ask you whether or not the 'Black Gull' continued in operation under this charter, Exhibit 10 for identification, from the time that charter was entered into, down to and including the 18th day of July, 1952? A. That is correct."

• • •

[258] At page 24 he simply read the provision of the by law as to the arrangement under which Sigurd Herlofsen & Co. had become managers, and it is substantially what he paraphrased before. He testified that the company relied on the master of the ship to hire replacements of the crew in instances in which there was——

• • •

in instances in which there was no time to send someone out in Norway. He testified at page 30 that as the masters and other officers of Herlofsen vessels were relieved and came back home it was their custom to stop in at the office of Sigurd Herlofsen & Co., where as a rule they stopped in to see him and also stopped in to see the heads of the respective departments [258a] of the Herlofsen business, whether it be the Maritime Department or the Technical Department and talked things over with them.

• • •

[259] "Q. And when her earlier masters were relieved by their successors, did they not come here to report to Sigurd Herlofsen & Co.? A. Yes, they always came to my office when they left the ship.

"Q. And did they not report to you in general? A. In general, they reported to my Maritime and Technical Department.

"Q. That report was what—an oral report, a written report, or both? A. It was not written, it was more or less an informal talk.

"Q. And when you say your Maritime and Technical Department, just what do you mean? A. You mean at the time of the disaster?

"Q. Let us say between the time the 'Black Gull' [259a] was first delivered to Black Diamond under charter Exhibit

No. 10, and the end of June 1952. A. The head of my Maritime Department was Captain Wellton.

"Q. He is the man you mentioned earlier? A. Correct. And we had two men in the Technical Department, Mr. Lie and Mr. Rambech."

Mr. Pyne: That is all right.

• • •

[267] "Q. Whether as a matter of law or not, as a matter of practice it was the master who was the highest ranking employee of Herlofsen & Co. who determined, or at least exercised a veto power over the acceptance of cargo and its stowage? A. Yes, that is the only practical way of operation.

"Q. And that system did exist for the whole period of this charter? A. For the whole period of the charter."

• • •

[268] "Q. In exercising that authority, did the master ever consult with you or with anyone else in Sigurd Herlofsen & Co.? A. Not to the best of my knowledge."

• • •

• • • cross-examination of Captain Svendsen • • •

• • •

[270] "Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stored on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions about.

"Q. Ten occasions during that period? A. Yes."

• • •

Deposition of Johannes A. Driesprong
Deposition of Jacobus de Nobel

"Q. Did you on any occasion mention that to Captain Wellton? A. No."

• • •

[271] "Q. You kept that strictly to yourself? A. Yes, because to me it was nothing unusual. I had, as a chief officer, carried naphthalene on deck in just that same manner.

"Q. And you felt that it did not require any particular mention to your superior? A. Yes.

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it."

The Court: What was the deponent's name in that deposition?

Mr. Zisgen: Inge Svendsen. • • •

• • •

[289] JOHANNAS DRIESPRONG

Mr. Pyne: May I state here, your Honor, that the witness was examined in English, but as to some of it he had to get the aid of the interpreter.

[290] If I recall it, I think that was true of all of these witnesses, Mr. Abberley.

Mr. Abberley: I believe so.

• • •

[304] "Q. Mr. de Nobel, immediately prior to the time of this fire that occurred, where were you? A. Well, we had had the captain's dinner, and let's say at ten-thirty I went up to my room and before undressing myself I just went out because my room was very near to the outside, to the gangway outside. And so I may have been for 5 or 10 minutes just on the deck, just to have a bit of fresh air.

Well, and then I went in. In the meantime, Mr. Spaanderman had undressed himself and was lying on his bed. And then I started to undress myself and I had just my jacket taken out when the stewardess came up and said to us: "gentlemen"—there is a word "ship"——

Mr. Pyne: Yes.

Mr. Abberley: ——"ship in fire, dress yourselves. Take it easy. Take it easy. So I just took my pair of trousers off, the new one, you know, and put my old suit on because all my belongings were nearly all in there,—belongings I mean portfolio, passport cheques and such like things. That I knew, you see. So, I indeed took it a bit easy, because I did not know it was so [305] very dangerous already. Then this lady told me also to go to the smoking room. But before going to the smoking room. But before going to the smoking room I just looked out again on this deck as I had been before, and saw already one lifeboat, the motor lifeboat, in fire, in flames.

"Well, then I went to this smoking room and just waited what would happen afterward.

• • •

[313] Peter Spaanderman

"Q. Where do you reside, Mr. Spaanderman? A. Santpoort, 47, Van Dalenlaan.

"Q. What is your age, Mr. Spaanderman? A. A. 39.

"Q. What is your nationality? A. Dutch.

"Q. Were you a passenger on the Black Gull on July 18, 1952? A. I was.

"Q. You were travelling with Mr. de Nobel? A. I was travelling with Mr. de Nobel, yes."

• • •

Deposition of Peter Spaanderman

"Q. • • • are you and Mr. de Nobel in the same office? A. We are in the same office. Mr. de Nobel is my secretary."

• • •

"Q. When you boarded the Black Gull, were you assigned a cabin? A. Yes.

"Q. Was Mr. de Nobel in the same cabin with you? A. He was in the same cabin.

[315] This witness testified that he was several times on the deck where the cargo was stowed.

• • •

Mr. Pyne: But he also said "most of the time I was on the decks around the bridge."

• • •

[316] "Q. As to the maindeck where the cargo was stowed, in the stern of the vessel, did you ever see any members of the crew smoking in that area? A. I never saw any one smoking on the after deck."

• • •

"Q. Where were you immediately prior to the time you were notified that there was a fire? A. I came from the smoking room going up to my cabin, but just before I went to bed I looked out at the sea and then I went to my cabin, where I undressed. And I had just finished undressing, when the door was thrown open and the stewardess entered and said: Keep it easy, get dressed, the ship is in flame.

"I immediately went after her and saw that there was a fire abaft the motorboat.

"Q. Was the motorboat you refer to one of the two lifeboats on board? A. Yes, that was so.

[317] "Q. To clarify one point: the first thing you saw when you came out of your cabin was the motorboat burning? A. At that moment the motorboat was not yet on fire.

"Q. Tell us what you saw at that moment, and what you did from that moment on. A. At that moment I entered my cabin, quickly put on some clothes, and ran down

the stairs to the deck where the cargo was stowed. Some people were engaged in pulling a hose. I assisted in pulling that hose, until I presumed we had no longer any water.

• • •

[320] "Q. Let me interrupt here a moment. What members of the crew were in that boat with you? A. I believe the second officer, and then about 14 crew members, of what rank I do not know.

"Q. Now, Mr. Spaanderman, there came a time when you were picked up by the Gripsholm. Is that correct? A. Yes.

"Q. How much time would you say elapsed between the moment you were in the lifeboat and lowered in the water, and the time you were picked up by the Gripsholm? A. Between 3 and 3½ hours. But I must add that I had no notion of what time had elapsed."

• • •

[325] • • • deposition taken of Thomas Leeson

• • •

"Q. What is your occupation, Mr. Leeson? A. Well I represent divers firms over here and some in England for road and building machinery.

"Q. What is your nationality? A. British.

"Q. What is your age? A. 69½.

"Q. Were you a passenger on the M/S Black Gull on or about July 18, 1952? A. Yes.

• • •

[327] "Q. Tell us generally where you would walk on this ship?"

And he described a deck which he referred to as a promenade deck, as being the roof of their cabin.

"Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the main deck.

Deposition of Thomas D. Leeson

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

• • •

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any."

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[329] "Q. Mr. Leeson, do you recall the incident which took place on July 18, 1952, aboard the Black Gull? By that I mean the fire. A. I recall a lot of that incident.

"Q. Will you tell us what you can in chronological order of your experience on the evening of July 18, commencing at the time you were eating your dinner. Identify that time, if you can. A. Well, the dinner hour was between 6 and 6:30. They always ate early there. We—it was the captain's dinner. After—or during the dinner, the first officer, who was at the captain's dinner, for the first time in my recollection was called hurriedly out. The chief engineer and the captain also left the table. After the dinner was over, we all went into the lounge for coffee, and then we went up on deck, which would be after 10 o'clock, but I am not sure of the hour. We chatted on deck for a certain time. Then we went down to our cabin.

"Shall I carry on?

"Q. Yes. Please do. A. I was fast asleep when I was wakened by my wife, who told me the ship was on fire.

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[333] "Q. You spoke about or you were asked about smoking, and I understood you to say that you smoked on your own deck? A. Yes.

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[334] "Q. You spoke of seeing some passengers walking aft. I understood you to say that the crew walked aft where this naphthalene was located. A. The crew, yes.

Deposition of Thomas D. Leeson

"Q. And if I followed you, you said there were passengers there. A. There was one passenger. I can specify one passenger. He was a German young boy, and I know he used to get out along the fore part, from the bow of the ship. But I believe he was eventually told not to do it."

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[336] "Q. Was there exposed naphthalene on the deck from any broken bags or part of the deck where the crew walked? A. To the best of my recollection, that's where I saw the broken sacks, right at the very beginning."

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[337] This witness did say, however, that he did not see any big crystals. This witness also said he did not see any great or big quantities.

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Then this witness went on to testify he did see people sweeping up the crystals from time to time.

Mr. Pyne: In the early morning.
Mr. Abberley: In the early morning, yes.

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"Q. On how many occasions did you notice loose [338] naphthalene crystals on the main deck? A. I only noticed that right at the beginning, the first or second day out, when we were getting our bearings, looking at everything, and we noticed then that there were slopping over in a couple of places—of the crystal—but to say that we saw them day after day, I can't go that far. But there was a slopping out of naphthalene, naked crystals, onto the steel decks."

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"Q. Can you give us some idea of what we are talking about? Was this a handful or a bucketful? Was it a large

quantity or a small quantity? A. Visible small quantity in a couple of places. Visible small quantities.

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[339] "Q. But on the port side, this stow of bags of naphthalene extended about the height of the bulwarks. A. Yes.

"Q. Inboard within two or three feet of the hatch coaming? A. Yes.

"Q. As you saw it, it was approximately a solid stow from forward toward the aft, on the port side? A. Yes, if you call sacks, ordinary gunnysacks [340] filled with loose crystals a solid stow, then I'm with you.

"Q. I am not talking of anything like brick, but the bags were stowed closely together? A. They were stowed closely together."

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"Q. And you smoked where you wanted to? A. Well, yes and no. We only wanted to smoke on our own deck. That was the only part of the ship that interested us, and we smoked there."

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"Q. You don't happen to be a cigar or cigarette smoker, do you? A. Cigars, definitely not. Cigarettes, practically definitely not."

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[341] "Q. Do you remember what time it was that you actually turned in to bed that night, approximately? A. Ten-ish,

"Q. Ten-ish? Around ten o'clock? A. About.

"Q. And your wife went to bed at approximately the same time? A. Yes.

"Q. When had you last, prior to that, that night, if at all, been out in the open on that deck, either on this promenade or any other deck? A. After we finished dinner and

coffee, we went up on the promenade deck for a bit of fresh air."

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[342] "Q. What did you do, Mr. Leeson, with the tickets you received?"

Mrs. Leeson interjects: "They were probably destroyed."

"A. We turned them in to the steward when we got aboard.

"Q. You turned them in to the steward, or the purser, or whoever had charge of that? A. Yes.

"Q. I am going to show you a form of ticket and ask you whether or not that is the same kind, type and form of ticket properly filled in that you had and you used? A. Do I have to read all this, because I didn't read the other one——"

Mr. Abberley states: "I understand that this is a copy of the ticket or the contract," and I [343] said, "This one that I am producing. I will ask to have that marked."

It was marked, your Honor, and I will now offer that form in evidence as an exhibit.

(Marked Petitioner's Exhibit C.)

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[347] "Q. Do you smoke, Mrs. Leeson? A. No.

"Q. At any time did you ever notice anyone, passengers, officers or crew, smoking on the main decks of the Black Gull? Do you recall the main deck where the naphthalene was stored? A. Yes; I do. No. They didn't go there.

"Q. Who didn't go there? A. The passengers.

"Q. Did you at any time ever notice any of the crew smoking on the main decks? A. No. I didn't take any notice of it.

"Q. Did you notice any of the officers smoking on the main decks? A. No.

"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner.

"Mr. Pyne: In the dining room?

"The Witness: In the dining room or the lounge.

"Q. That is where you saw them smoke? [348] A. Yes.

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[359] *Direct examination By Mr. Longley:*

Q. Captain, you understand some English, do you not? A. (In English) Yes.

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[360] Q. You have been brought to this country by the [361] owners or the former owners of the Black Gull? A. Yes, sir.

Q. To testify in this case? A. Yes, sir.

Q. How long had you been master of the Black Gull before her last voyage? A. I have been approximately two months master on the Black Gull.

Q. Only two months. A. Yes, sir.

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[363] Q. Captain, going back to the last voyage of the Black Gull, at the time of her stowage, the stowage was laid out by Captain Hollaar of Black Diamond Steamship Company, was it not? A. Yes, sir.

Q. She loaded at the two German ports of Hamburg and Bremen first, did she not? A. Yes, sir.

Q. And there general cargo was stowed in her holds? A. Yes, sir.

Q. And then she proceeded to Antwerp? A. Yes.

Q. And there other general cargo was loaded in her holds? A. Yes.

Q. And naphthalene was loaded on the ship's deck, [364] is that not correct? A. Yes, sir.

Q. The stowage of the naphthalene on deck was laid out by Captain Hollaar, as to where and how it was to be stowed, is that not true? A. Yes, sir.

Q. And then he showed you how he planned to stow the naphthalene, did he not? A. Yes, sir.

Q. And you approved it. A. Yes, sir.

Q. Then the vessel proceeded to Rotterdam and at Rotterdam——

(Witness nods head)

Q. Answer audibly, Captain, if you will. A. Yes.

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Q. And at Rotterdam, in addition to general cargo, some more naphthalene was stowed on the ship's decks? [365] A. Yes, sir.

Q. Captain, how many tons of naphthalene were stowed on the decks of the Black Gull? Do you have your log book? A. I can produce them.

Mr. Longley: The manifest, I suppose, would show it.

Mr. Pyne: The manifest, but I don't think that will be in the log book.

Mr. Longley: Well, let us have the manifest.

A. I can take the cargo plan.

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[366] Q. Captain, I lay before you a stowage plan heretofore marked Libelants' Exhibit 11-A, which you may examine at any time you wish (handing to witness). A. Thank you.

(The interpreter speaks with the witness.)

Q. Now, can you tell us first, Captain, how many bags of naphthalene were stowed at Antwerp?

(Witness examines)

Q. And the tonnage that was then there stowed on the deck, if you can get it from that plan. A. There was on the aft deck abeam of No. 4 hatch, was 605 bags, approximately 61 tons.

Q. Approximately how many tons? A. 61.

Q. 61 tons? A. Yes.

Q. And how many tons were stowed forward? A. That was all stowed on the after deck, 61 tons at Antwerp.

Q. There were only 61 tons stowed aft at Antwerp? A. Yes.

(To the interpreter) Yes.

[367] Q. And then at Rotterdam how many bags and how many tons of naphthalene first were stowed on the after deck? A. On the after deck was stowed 210 bags of naphthalene, 203 tons.

Q. Now, there is something wrong. A. No, 2,010 bags.

Q. 2,010 bags weighing 203 tons? A. Yes.

Q. And where on the after deck were those bags stowed? A. That was stowed further back from the naphthalene from Antwerp.

Q. And how many bags and tons of naphthalene were stowed forward at Rotterdam? A. 3,333 bags, 305 tons.

Q. So that when you eventually sailed from Rotterdam the only naphthalene you had forward were those 3,333 bags stowed at Rotterdam? A. Yes, sir.

Q. While aft you had the 2,010 bags—was it—— A. Yes, sir.

Q. ——stowed at Antwerp—and what was the other number of bags? A. 605.

[368] Mr. Pyne: 605 bags stowed at Antwerp.

Q. Yes, 605 bags stowed at Antwerp and 2,010 bags stowed at Rotterdam. A. Yes, sir.

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[371] Q. What is this here (indicating)? A. That is a masthouse.

Q. And a masthouse, and by No. 5 hatch? A. Yes, sir.

Q. How close to the poop did the stow of naphthalene extend? A. It was about the same passage in the aft part, or close to the poop as it was to the boat deck.

Q. Well, I do not want to deceive you, Captain. You may have forgotten there were some barrel cargo back there, did you? Wasn't there? Don't you remember some chemicals back there? A. There was no chemicals there.

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[373] Q. Again you had a solid stow of naphthalene from a point approximately 3 feet aft of the ladder shown in this drawing—— A. Yes.

Q. ——to a point approximately 3 feet forward of the ladder aft extending up to the deck over the poop? A. Yes, sir.

The Court: And there were no barrels of chemicals on either side?

The Witness: Not on the sides.

Q. Well, where were the barrels of chemicals? A. They were in the after part of the No. 4 hatch, close up to the front of the masthouse.

Q. Was that elevated somewhat from the deck then? A. The same height of the deck.

Q. Oh, the same height as the deck? A. Yes.

Q. Now, dealing with the masthouse, is that also where your winches were? A. The winches were on top of the masthouse.

Q. How high was the masthouse? A. I would say about close to 8 feet, 7 or 8 feet.

Q. Now, Captain, there was no covering of any kind over the naphthalene, with the exception of [374] rope slings, isn't that true? A. Right, sir.

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[384] Q. Now, Captain, I want to deal with the voyage from Rotterdam over to the point where the fire broke out. It was a July voyage with a hot sun, was it not? A. (In English) I won't say it was hot but it was rather warm, but I have all the temperatures, if you would like to see them.

Q. It was what?

(Answer read)

Mr. Stonebridge: Might I suggest that the [385] witness be permitted to refresh his memory from the log?

Mr. Longley: I told him that he could refresh his memory in any way that he wished from the log—where is the log? He had it this morning.

Q. Captain, I want you to feel when I get through—I want to be absolutely fair to you because I recognize you as an upright man. I do not want you to feel I am criticizing you in any way. A. (In English) Thank you.

Mr. Pyne: If I may interrupt here, your Honor, the Capain has compiled in Norwegian and checked with the log book the temperatures as recorded in the log book day by day and watch by watch, they record them watch by watch while she is under way, but only at noontime while she was in port—the temperature and the wind conditions from the time they started to load their cargo at Antwerp until the last entry in the log books on the date of the disaster.

Mr. Longley: That is satisfactory.

Mr. Pyne: And Captain Lynner has translated that Norwegian into English and it might be just as well now if we could present those and have the Cap-

tain identify them, and Captain Lynner identify the translation.

[386] Mr. Longley: That is all right. You do not have to translate figures.

Mr. Pyne: Well, there is a lot of it in Norwegian and they are all centigrade temperatures, I might add, your Honor (handing).

Mr. Longley: Thank you.

By Mr. Longley:

Q. Captain, have you prepared that summary of the temperatures (handing to witness)? A. (In English) Yes, sir.

Q. Now, where were those temperatures taken, Captain? A. (In English) It was taken on the bridge.

Q. In the shade on the bridge? A. (In English) In the shade, yes.

Q. You have no record of the temperatures out in the sun? A. (In English) No, sir.

Mr. Pyne: May I ask now that the two documents be marked in evidence? I suggest they be marked as one exhibit A for the Norwegian, prepared by the captain, and B for the English as translated by Captain Lynner.

(Marked Petitioners' Exhibits D-1 and D-2.)

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[387] Q. Dealing with Petitioners' Exhibit D-1, these columns (indicating) have certain figures at the top, 0 to 0400—that means from midnight to 4 a.m. A. (In English) Yes, sir.

Q. And the other times—you keep time up to 2400, meaning, I suppose, midnight? A. (In English) Yes.

Q. And these temperatures are in centigrade, are they not? [388] A. (In English) Yes, sir.

Q. Then during the course of the voyage you had a little engine trouble, did you not, Captain?

Oh, by the way, what has happened to the log book?

Mr. Longley: Don't you want to let him have it?

A. (Through the interpreter) We had no damage to the engine. We just had shifting of a valve, fuel oil valve.

Mr. Pyne: If it is not going to interrupt the proceedings, your Honor, I have presented both the rough deck log and the smooth deck log book and I will either offer them now for identification or in evidence.

Mr. Longley: Whichever you prefer—I don't care.

Mr. Pyne: I will offer them both in evidence, your Honor.

Excuse me a minute, Captain, I will give them back to you.

(Witness hands to Mr. Pyne)

Mr. Pyne: I am offering first the rough deck log book—I think this had better be separately marked.

[389] (Marked Petitioners' Exhibit E.)

Mr. Pyne: Now, may I also offer in evidence the final deck log book, sometimes referred to as the smooth deck log book, which I am certain, based on Captain Lynner's translation, is merely a copy of the entries in the rough log book, set up in smooth, final form.

(Marked Petitioners' Exhibit F.)

By Mr. Longley:

Q. Do you find the entry, Captain, dealing with your engine trouble? A. (In English) Yes, sir.

Q. Tell us about when it was.

Mr. Pyne: Will you give us the date, too, Captain?

The Witness: (In English) That date was the 14th July.

The Interpreter: "13.18, stop for changing of a fuel oil valve."

Q. And how long did you have your engines stopped? A. (In English) Twenty-one minutes.

Q. And was that the only stoppage of your engines during the voyage, Captain? A. (Through the interpreter) No, we had two small stops later on the same day, that is, "Stop at 17.08 [390] to 17.14, and 19.05 to 19.13."

Q. Those three stoppages were on the same day? A. (In English) Yes.

Q. Are those the only stoppages of your engines during the voyage? A. (In English) Yes.

Mr. Pyne: May I at this time, your Honor, state for the record that Mr. Zisgen has asked me whether these log books were the same ones produced and marked at Oslo on the depositions last August, and I replied in the affirmative that they are, and they were marked for identification at Oslo in August.

Q. Your ship is powered with diesel engines—was she not? A. Yes.

Q. Let me see—you were a single screw ship? A. (In English) Yes.

Q. You had what, two main engines or one? A. (In English) One main engine.

Q. So that when that one main engine had to have something done to it, that is, to have new valves put in, you were without motive power during that period? A. (In English) Yes, sir.

Q. Now, your exhaust gases from your diesels [391] went up through a funnel, did they not? A. (In English) Yes, sir.

Q. When your engines started up or when there is any difficulty with your engines, then you have sparks from your funnel, do you not? A. (Through the interpreter) Very seldom.

Q. On this voyage of the Black Gull, isn't it true that you had sparks coming from your funnel? A. (Through the interpreter) I didn't see any as far as I remember.

Q. Weren't sparks reported to you by one or more of your officers? A. (Through the interpreter) Not that I can remember.

Q. Well, going forward with your voyage, there came a time when you fixed your position off Nantucket Shoals Lightship, isn't that true? A. (Through the interpreter) Yes.

Q. When was that, Captain? Look in your log book. A. (After examining) (In English) 19.24 passed Nantucket 8 miles off.

Q. And then having fixed your position at a point 8 miles off, you then laid a course for Ambrose, did you not? A. (In English) Yes, sir.

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[392] Q. And then at what hour was it that fire broke out in your cargo, Captain?

Look in your log book any time you wish. A. (In English, after examining) It was about 2300, a little after 2300.

Q. And what was the position of your ship at that time by latitude and longitude? You have it in your log book, I believe, Captain. A. (In English) No, I haven't got it. I have in there an abstract.

Mr. Longley: He wants his abstract—perhaps he means his protest.

The Witness: (In English) Pardon me——

Mr. Pyne: He is talking about the maritime declaration.

The Witness: (Through the interpreter) In the maritime declaration.

Mr. Longley: Do you have it in Norwegian?

Mr. Pyne: I have it in Norwegian, yes.

(Handed to the witness)

The Interpreter: Do you want me to translate it?

Mr. Longley: All right, give it to us in latitude and longitude. I don't think that would [393] need a translation, however.

The Interpreter: "When the accident occurred on July 18, 1952, the ship had passed Nantucket Lightship at 19.24 and about 3½ hours later the accident occurred."

Mr. Pyne: May I for the record, your Honor, state that what we have been referring to here as a maritime declaration is the investigation made by the Norwegian Government authorities, much similar, according to my information, to what our Coast Guard Board of Investigation would be into accidents of one kind or another.

Q. Well, getting to the point, what was the position of the ship?

The Interpreter: The position at that time was 40 degrees 30 minutes north latitude, and 71 degrees west longitude, according to the Captain's estimate.

Q. Captain, where were you when the fire broke out? A. (In English) I must have been in my cabin.

Q. Did somebody come and advise you of it? A. (In English) The third officer advised me.

Q. By coming to your cabin? A. (In English) Yes.

[394] Q. And then what did you do, Captain?

Mr. Pyne: May we have an answer to that question "by coming to your cabin"?

(Record read by the reporter)

Mr. Pyne: Thank you.

A. (In English) Then I ran out on deck, on the bridge, and had a look to where the fire was.

Q. What did the third mate tell you when he came to your cabin? A. (In English) The exact words I can't tell, but he said there was fire in the naphthalene bags on the port side.

Q. So you immediately went to the bridge and you went out on the flying bridge on the port side, did you? A. (In English) I went out on the lower bridge and I ran over on the sun deck, I think, and saw the smoke and the fire.

Q. Where was it burning? A. On the port side of No. 4 hatch.

Q. In relation to the bulwarks and the hatch coaming, where was it? It was about halfway between, Captain? A. (In English) Yes, about halfway between, I [395] can say that but it looked like this (demonstrating), and then I had to run up on the bridge again.

Q. I did not understand that.

The Interpreter: "I just had a quick look and then I ran up on the bridge again."

Q. Now go on, Captain, and tell us just what you did and what you saw in relation to this fire. A. (In English) I saw dense smoke, dark——

The Witness: Can I take it in Norwegian?

Mr. Pyne: Oh, yes, questions and answers both in Norwegian.

(The witness speaks with the interpreter in Norwegian.)

A. (Through the interpreter) I saw very dark smoke and little flame, and then I immediately ran back to the bridge and asked the man at the helm to put the rudder hard to port, stand by in the engine room and slow speed, signals with the whistle, and straightened the ship as to the course when we got the wind on the starboard side.

Q. You haven't told us anything yet, Captain, about fighting the fire. A. (In English) No, but then——

Mr. Pyne: Captain, would you please put [396] these questions as asked into Norwegian and then let the witness answer it?

(The interpreter speaks with the witness.)

A. (Through the interpreter) What I told was what happened in the first minute. At the same time I went back on the bridge, I order all hands to be called out.

Q. Who was in charge of fighting the fire, Captain? A. (In English) The chief officer and——

(Through the interpreter) The chief, second and third officers, they did most of the work——

The Witness: (In English) No, no.

A. (Through the interpreter) They were leading the work.

Q. You had hydrants on deck, did you not? That is hose connections? A. (Through the interpreter) Yes.

Q. How many streams of water were poured on the fire, Captain? A. (Through the interpreter) How many hose connections I could use?

Q. Well, how many hose connections did you use? A. (Through the interpreter) We used four.

Q. And your pumps were pumping water through those [397] hoses at full pressure? A. (Through the interpreter) With good pressure.

Q. And that operation of pouring water out of the four hoses onto the after cargo where the fire was burning started within a very short time after the fire broke out, isn't that true? A. (Through the interpreter) Yes.

Q. You found it impossible to extinguish the fire, did you not? A. (Through the interpreter) Yes.

Q. Now, the fire spread from its initial point where it broke out, outboard from the No. 4 hatch? A. (Through the interpreter) Yes, it spread out.

Q. And it spread forward, too, didn't it? A. (Through the interpreter) Yes.

Q. And then it spread over on the starboard side of the deck load of naphthalene, isn't that so? A. (Through the interpreter) Yes.

Q. And you soon had a wall of flame on the after end of your ship extending high into the air, isn't that so?

(The interpreter speaks with the witness.)

The Interpreter: And then from side to side?

(Question read)

[398] A. (Through the interpreter) Yes, there was a wall of fire there but it was mostly smoke. The fire was low on the bags.

Q. Captain, at the point where the fire broke out was over No. 4 'tween-deck, was it not? A. (Through the interpreter) Yes.

Q. There was no cargo stowed in No. 4 'tween-deck, was there? A. (Through the interpreter) Yes, there was.

Q. There was cargo? A. (Through the interpreter) There was.

Q. Well, let us see the stowage plan.

I lay before you Libelants' Exhibit A (handing to witness).

(The interpreter speaks with the witness.)

Q. Oh, you did have this lot (indicating)—I thought the end of the hold was there. You had 100 cases of—what is this? A. (In English) Armagnac Brandy.

Q. So the only thing in No. 4 'tween-deck was 100 cases of brandy? A. (In English) Yes.

[399] Q. You agree, do you not, Captain, that there was no cargo in No. 4 'tweendeck that could have caused this fire which you found in the naphthalene? A. Yes.

Q. And there was no electric connection in the vicinity which might be defective which could have caused this fire?

A. There were no electric connections in the 'tweendecks.

Q. And there were no electric connections on deck in the way of No. 4, either, were there?

Mr. Pyne: I think there may have been a misunderstanding here about this word as translated, electric connections, and what is meant by it.

The Court: The witness used the word "connections", so he understood it. The interpreter said "conduits" but the witness said "connections" so he understood.

A. No, not in the vicinity.

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[400] Q. Do you or do you not know whether this commodity naphthalene is susceptible to spontaneous combustion? A. No, I do not.

Q. You do not know? A. No. As far as I know, it is not liable to spontaneous combustion.

Q. Captain, the only possible way that this naphthalene could have become ignited was by some agency outside of itself; isn't that so?

Mr. Pyne: Again, your Honor, I say that is not a question for the master of the ship. That is distinctly a question for a chemist, and I say that there is no groundwork laid here for that question.

The Court: I think so. You see, he said so far as he knew it was not subject to spontaneous combustion.

Q. Captain, I will ask you to assume it is not [401] susceptible to spontaneous combustion. On that assumption do you know of any possible cause of this ignition except by the application of heat from some outside source?

The Court: I do not see how we could possibly get an informative answer to that question. If he

understood what spontaneous combustion means, he has answered, and it either has to be from inside or outside.

Mr. Longley: All right, I withdraw the question.

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[422] Dr. Chester A. Snell

Cross-examination by Mr. Stonebridge:

Q. Doctor, if I recall correctly, you said that according to an article you recently read, the temperature of a burning cigarette approaches 500° Fahrenheit; is that correct? A. No, I said a minimum temperature.

Q. A minimum temperature of 500° Fahrenheit. A. That is the temperature at the outside when there is no draft being drawn on it.

Q. Doctor, what is the ignition point of pure naphthalene? A. That is rather indefinite. It is about five degrees higher than the flash point, but like the flash point it depends on the method of test. You see, there are several different pieces of apparatus for testing flash and fire point.

Q. Sir, are you familiar with Chemical Engineers Handbook by Perry, Fiftieth Edition? A. I am, yes.

Q. If that particular work gave the ignition temperature of pure naphthalene as 1000 in 38° Fahren- [423] heit, would you say it is probably correct? A. No, I would say you are quoting the autogenous temperature that is the temperature at which it will ignite in flame or fire.

Q. This in effect you are saying is the dull ignition point? A. Yes, it is not the fire point.

Q. Doctor, in your studies by any chance did you look at the United States Coast Guard regulations with respect to naphthalene? A. No, I did not.

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Deposition of Peter Didrick Herlofsen

[425] Mr. Pyne: The first one is Peter Didrick Herlofsen.

"Q. Mr. Herlofsen, where do you reside? A. Gyldenlovsgt 48, Oslo.

"Q. What is your occupation, Mr. Herlofsen? A. I am a ship owner.

"Q. And as a ship owner, do you have an association or connection with any particular firm, corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is? A. It is a limited company, with principal offices in Drammensveien 88b.

"Q. Is that the premises where we are now? A. Yes, that is right.

[426] "Q. What, please, is the type of business that is done by that company? A. That is, in short, ship-owning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

"Q. That is, all the companies that do business through Sigurd Herlofsen, for those companies or vessels owners Sigurd Herlofsen & Co. A/S acts as a manager, as you call it? A. Correct.

"Q. And as a manager, will you tell us precisely what type of thing they do for the ship owner? A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co.'s office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, by-laws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the 'Black Gull', who the owner of

that vessel was in June and July, 1952? [427] A. That was Skips A/S Jolund, registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the board, and since 1953 I have been chairman of the board.

"Q. And when you say board, are you referring to the board of directors of that vessel owned by that company that you mentioned, that limited liability company of Moss? A. Yes.

"Q. Did you personally yourself ever go aboard or see the motor vessel 'Black Gull'? A. Yes, on the trial trip.

"Q. Do you know when and where the vessel was built? A. I will have to refresh my memory—yes, it was built August 1949, in Landskrona, Sweden.

"Q. Was that month of August 1949 the month and year of the completion of the vessel? [428] A. Yes, and at that time she was called the S.S. 'Herborg'.

"Q. And was it during that month that you were aboard of her for the trial trip? A. Yes.

"Q. And where was the trial trip held? A. In Landskrona, where the ship was built.

"Q. Subsequently to that boarding of the vessel, were you again at any time on board her? A. No.

"Q. I am going to show you, Mr. Herlofsen, a paper which has already been marked 'Jolund Exhibit 1 for identification, August 1, 1955', and I will ask you whether or not you can identify that paper and tell me what it is? A. That is what we call a general arrangement plan of the 'Black Gull.' "

That document I believe has already been marked.

Mr. Zisgen: As Libelants' Exhibit 17.

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"Q. And on the basis of what you saw of the vessel when you were aboard of her at the time you have [429] stated, and to the best of your recollection and belief, is that plan a true and correct diagram plan and arrangement of the vessel? A. To the best of my belief it is.

"Q. Do you recall, Mr. Herlofsen, when the name of the 'Herborg' was changed to the 'Black Gull'? A. That would be—wait a minute, I have to refresh my memory. That would have been shortly prior or after the first time charter with the Black Diamond Line.

"Q. And to the best of your recollection—approximately, if you cannot state it accurately or exactly, approximately will do—was the first charter of the vessel made to the Black Diamond Line? A. The first charter was made to the Black Diamond 11th May 1949.

"Q. You use the expression Black Diamond Line. I am asking you whether or not that charter was made to Black Diamond Steamship Corporation, New York? A. I might have made a mistake, but that will be seen in the charter, which you may have a copy of.

"Q. I am going to show you another document, but I first will ask the reporter to make it as an exhibit for identification."

[430] It was marked as of that date Exhibit 10.

"I am going to show you a document which has just been marked 'Jolund Exhibit 10, today's date' and I will ask you if you can identify that document? A. Yes, that is a copy of a charter party between Skibs A/S Jolund and Black Diamond Steamship Corporation.

"Q. The date of it is what? A. 3rd September 1949.

"Q. And I notice down at the bottom there are some initials. Can you tell me whose initials they are? A. The one on the left is S. H., my father's initials.

"Q. And your father's full name? A. Sigurd Herlofsen.

Deposition of Peter Didrick Herlofsen

"Q. And at the time of that charter, what connection did your father have with Sigurd Herlofsen & Co.? A. He was the managing director of Sigurd Herlofsen & Co.

"Q. And is your father now deceased? A. He is deceased.

"Q. At the time this charter was made, you, however, were connected with the company? A. I was director in Sigurd Herlofsen & Co.

"Q. As of today you are the managing director of Sigurd Herlofsen & Co.? [431] A. Correct.

"Q. Having in that capacity succeeded your father? A. Correct."

Now that charter was then offered and marked, and I see that it has already also been marked in evidence here previously.

The Court: Libelants' Exhibit 42.

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"Q. Insofar as Mr. Herlofsen is concerned, I know I do not properly pronounce the name Skips A/S Jolund, with during the course of the management of that ship by Sigurd Herlofsen, what does the owning company, which for short I will call Jolund, actually do? A. The company itself is not active in business as long as the management is left to Sigurd Herlofsen & Co. A/S."

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"Q. When you say they are not active, what passes, if anything, back and forth between the owner company Jolund for short, and Sigurd Herlofsen & Co.? A. I can put it this way. All remittances coming in for any earnings made by the vessels owned by Jolund, [432] goes into Jolund's account. All payments made for disbursements are made out of Jolund's account, but everything is supervised by Sigurd Herlofsen & Co., and the board of directors of course every

year in the Jolund agree the yearly account and all the statements.

"Q. At the time the 'Black Gull' was first put in operation or service was she, and during the course of her building was she subject to or placed in any classification or society?"

There is a mistake in the typing there. The answer is "Yes," and the next question is, "What society?" A. The Norwegian Veritas.

"Q. Do you know what class the vessel was given by that society? A. The very best class.

"Q. And do you know whether or not that class was at any time throughout the operation of the vessel, and down to and including the date of 8th July 1952, in any way changed, altered or withdrawn? A. No.

"Q. Was that class throughout the time mentioned, maintained? A. It was maintained.

[433] "Q. Can and will you tell us, Mr. Herlofsen, you have already having stated that Sigurd Herlofsen selects or engages, or appoints, rather, the members of the crew, can you tell us what the system of Sigurd Herlofsen is, and was particularly in June and July and prior to that in connection with the selection of officers——"

With June and July, 1952 was left out, and with permission I will insert the year 1952.

"— and was particularly in June and July 1952, and prior to that in connection with the selection of officers and crew, and their engagement or appointment? A. We have our own crew department, which at that time was headed by the head of our Maritime Department. That man employed all the captains and deck officers, while the Technical Department employed all the engine staff. With regard to the ordinary crew, they were more or less selected by an assistant in the Crew Department.

"Q. Now you have mentioned the man who selects the deck officers. Who was that man? A. That was Captain Wellton.

Deposition of Peter Didrick Herlofsen

"Q. Is he presently employed by Sigurd Herlofsen? A. He is retired.

[434] "Q. And at the time in June and July 1952, did Captain Wellton have any particular title here in your organization of Sigurd Herlofsen & Co.? A. The literal translation is 'inspector.' Being the shipowner's surveyor, he could be called a marine superintendent.

"Q. Did Sigurd Herlofsen & Co., or did it not, in connection with the officers, master and other deck officers, engineers and other members of the crew, follow the system which you have just outlined insofar as concerned the officers and crew who were serving on the 'Black Gull' in June and July 1952? A. Yes, we did.

"Q. From the time that the charter was entered into, a photostat of which charter has been marked"——

I will refer now to the libelants' exhibit on the trial here, Exhibit 42——

"Did the 'Black Gull' remain under that charter? A. That I cannot answer. There may have been a different charter drawn up, as more or less direct continuation of that charter exhibited, but I cannot answer that, right now.

"Q. Would you be able, from your records here in the office, to ascertain that, and tell us today whether [435] that is the situation? A. I could probably do that.

"Q. I wish you would. A. If it is a ten years charter it is the same charter. Then I have to correct the previous statement.

"Q. Well, then, I will again, to make sure we are straightening the record out, ask you whether or not the 'Black Gull' continued in operation under this charter, Exhibit 10 for identification, from the time that charter was entered into, down to and including the 18th day of July 1952? A. That is correct.

"Q. Now throughout that time, what, if anything did Skips A/S Jolund and/or Sigurd Herlofsen & Co. do in connection with the selection or engagement of any stevedores? A. Nothing at all.

Deposition of Peter Didrick Herlofsen

"Q. Did either the owner company mentioned or Sigurd Herlofsen & Co. ever receive any bills or make any payments to the stevedores? A. None whatsoever.

"Q. Did either the owner company or Sigurd Herlofsen & Co. at any time throughout that charter have any dealings with or communications to or from the [436] stevedores? A. None whatsoever.

"Q. Throughout that period of time, did either the owner company Jolund or Sigurd Herlofsen & Co., or any of its officers, directors or employees, take any part in or have anything to do with the loading and stowage of cargoes or the discharge of cargoes on the 'Black Gull'? A. Nothing whatsoever.

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"Q. You have stated, Mr. Herlofsen, that no officer, director or employee of either Skibs A/S Jolund or Sigurd Herlofsen & Co. had anything whatever to do with loading, stowage or discharge of cargoes. I am asking you whether or not the master of the vessel had any part in, or anything to do with the loading or stowage of cargoes—the master being an employee, of course, as you have already testified, of the owner? A. I think that question should better be asked of Captain Svendsen."

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[437] "Q. Throughout the period of the term of the charter, Libelants' Exhibit 42, was Skibs A/S Jolund, the owner, or Sigurd Herlofsen, advised from time to time, or given any information as to what cargoes were proposed to be loaded on the 'Black Gull'? A. No, never.

"Q. Were they given any information as to what cargoes had been loaded and carried on the 'Black Gull'? A. You mean before she burned out?

"Q. That is right. Throughout the time of the charter. A. No.

"Q. Throughout the time of that charter, and the operation of the vessel under that charter, Libelants' Exhibit

42, was any information sent to the owner Skips A/S Jolund or to Sigurd Herlofsen & Co. as to how or where cargo was to be loaded or stowed on the vessel? A. Never.

"Q. Or was that owner or managing company ever given any information as to where or how cargo had been loaded, stowed and carried on the vessel? A. Never.

"Q. Throughout the time of that charter, was [438] that owner Jolund Sigurd Herlofsen & Co. sent or given or received copies of any bills of lading? A. Never.

"Q. Throughout the time of the charter, were they sent or given any copies of manifests? A. No.

"Q. Do you know, Mr. Herlofsen, where—that is personal, physical location—the officers and directors, or any persons with managerial authority of Skips A/S Jolund were during the months of June and July 1952? A. I do not know their whereabouts at that time.

"Q. Do you know whether any of them were on board the 'Black Gull' at that time? A. They were not.

"Q. How are you able to state they were not on board the vessel, at the same time stating you do not know where they were? A. I do not know where they were, because they would have been on the ship's manifest, or rather the captain would have advised us if they were aboard.

"Q. You received no such advice? A. I received no such advice.

"Q. Similarly, with respect to the officers, directors or other officials or persons to whom managing [439] duties of any kind were assigned by Sigurd Herlofsen & Co., can you tell us or do you know where in June and July 1952 these persons were? A. My father died in May 1952. Personally I was up in Helsingfors in the Olympic Games when I heard about the disaster. With regard to the rest of the directors, I obviously cannot tell you that now.

"Q. Do you know whether any of the directors or other persons mentioned were on board the 'Black Gull'? A. They were not.

Deposition of Peter Didrick Herlofsen

"Q. How is it you can state they were not on board? A. For the obvious reason, if they had been on board they would have told me.

"Q. Are you in contact with these persons from time to time and more or less continuously in connection with the operation of the ships? A. We are continuously in contact with our board of directors in directors' meetings.

"Q. Now you have stated, Mr. Herlofsen, that Sigurd Herlofsen & Co. in connection with the vessels it manages, arranges for repairs and maintenance? Will you tell us what the company did in that connection so far as concerned the 'Black Gull'? A. The only thing I can say, she was kept up [439a] to the usual standards of our vessels."

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[440] "Q. Now you have stated, Mr. Herlofsen, that Sigurd Herlofsen & Co., in connection with the vessels [441] it manages, arranges for repairs and maintenance. Will you tell us what the company did in that connection so far as concerned the 'Black Gull'? A. The only thing I can say, she was kept up to the usual standard of our vessels.

"Q. Whenever repairs were required or recommended by classification societies or surveyors, were they not carried out? A. They were carried out."

With Mr. Stonebridge's permission, I will read one cross-question by him:

"Q. To clarify the record, sir, your tongue slipped. Was the 'Black Gull' built in 1948 or 1949? A. She must obviously have been built in 1948. I made a mistake. She was delivered in 1948."

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Mr. Stonebridge asked:

[442] "Did I understand you to say that Herlofsen & Co. was appointed the managing owner by Skibs A/S Jotund, or the manager?

Deposition of Peter Didrick Herlofsen

"Mr. Herlofsen: We use the word 'disponent'.

"Mr. Stonebridge: Will you be able now to produce these by-laws?"

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"Mr. Herlofsen has now Presented a printed paper in Norwegian, which he states are the by-laws of the Jolund Co., called for by libelants per proctor. I ask that it be marked for identification"——

But with permission of counsel, because a translation was placed in the record of the only section with which the parties were concerned or interested, I will not offer the whole by-laws, unless somebody requests it, but I will read into the record a translation of that one pertinent part.

The Court: That is good.

[443] Mr. Pyne: The translation reads:

"The firm of Sigurd Herlofsen & Co. A/S are, as long as they are shareholders, entitled to be the manager of the company—however, subject to the provisions of the Shipping Company Act."

Now do you care to read some cross, Mr. Zisgen?

Mr. Zisgen: Yes. This is still, your Honor, cross-examination of Mr. Herlofsen at page 21, about two-thirds of the way down the page:

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam, in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

Deposition of Peter Didrick Herlofsen

"Q. What was the situation with respect to ships chartered to Black Diamond Line? [444] A. There the agency representation was completely in the hands of the Black Diamond Line.

"Q. Do I understand by that that the agents of Black Diamond Steamship Corporation acted also as agents of Sigurd Herlofsen & Co.? A. No, I would not say that.

"Q. Then I must have misunderstood your earlier answer. You told us that when a general cargo ship of Herlofsen is to enter a port, she must have an agent. I understand you to say also that if that general cargo ship was under contract to Black Diamond, but what did you say—tell me that. A. When a ship under charter to the Black Diamond comes into port they use Black Diamond's agents exclusively.

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[445] "Q. Now, is there not at the same time an accounting by Herlofsen, as manager, to Jolund as owner, of what Herlofsen has done with the moneys received for Jolund's account, and the moneys paid out for Jolund's account. A. No, you see there is no money paid from Jolund to Sigurd Herlofsen, or vice versa. Every earning that comes in for Jolund's ships goes into Jolund's separate account. Any payments made goes out of Jolund's separate account."

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"Q. Did the 'Black Gull' have a single master during all of the period covered by this charter, Jolund Exhibit 10? A. No, she had different masters.

"Q. And when her earlier masters were relieved by their successors, did they not come here to report to Sigurd Herlofsen & Co.? A. Yes, they always came to my office when they [446] left the ship.

"Q. Did they not report to you in general? A. In general, they reported to my Maritime and Technical Department.

Deposition of Peter Didrick Herlofsen

"Q. That report was what—an oral report, a written report, or both? A. It was not written, it was more or less an informal talk.

"Q. And when you say your Maritime and Technical Department, just whom do you mean? A. You mean at the time of the disaster?

"Q. Let us say between the time the 'Black Gull' was first delivered to Black Diamond under charter, Exhibit No. 10, and the end of June, 1952. A. The head of my Maritime Department was Captain Wellton.

[447] "Q. He is the man you mentioned earlier? A. Correct. Then we had two men in the Technical Department, Mr. Lie and Mr. Rambech.

"Q. During the whole period they were the heads of those two departments? A. Mr. Rambech was not with us when the ship was delivered. He came later.

"Q. Both of them, however, were in your employ in July, 1952, as heads of their respective departments, and had been for some period prior to that, is that correct? A. That is correct, with the exception that Mr. Rambech was sick at that time.

"Q. And who looked after the work in his absence? A. Mr. Lie, who had had all that work with the construction of the ship before.

"Q. And it was to one or the other of these three men that masters returning to Oslo after replacement reported? A. Well, he talked to me when he came in, and with my bookkeeping department regarding his accounts, with the crew department regarding the crew, and if necessary, my insurance department with regard to insurance.

[448] "Q. And was it also the practice of your masters to see you and the heads of these departments when they came home on leave? A. If we were there, they usually were brought in to us.

"Q. How often do your masters as a rule get leave? A. They do not get leave, they just take a holiday once in a while.

Deposition of Peter Didrick Herlofsen

"Q. Is that any particular period, you could say fairly repeated the interval at which they would take leave? A. No, that is almost impossible.

"Q. Some took it more often than others? A. And some got sick, of course.

"Q. Was it also the practice of the officers, other than the master, to come in and report to you and the heads of your departments at various times? A. Whenever they left the ship and passed through Oslo on their way to their homes, they usually dropped in.

"Q. Now, if you can recall, what sort of thing did they usually discuss with you, whether master or other officers? A. Well, if they called on me the first thing I say is 'Do you like your ship?', and if there is [449] any complaint they were sure to bring it out. They usually discussed the length of their leave, and always used to ask for a better position. We generally made a little pleasant conversation.

"Q. Then after seeing you they went to see the heads of these various department? A. They might have seen the heads before they saw me, depending on whether or not I was in or not.

"Q. And I suppose that they discussed with the head of each department such features of their voyages as concerned the respective departments? A. I take that for granted.

"Q. You do not know? A. I take it for granted.

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"Q. In telling Mr. Pyne that you knew no officers or directors of Jolund were on board the 'Black Gull' in June and July 1952, I understand you to say that you knew that because if they had been they would have been listed on the manifest or the passenger list? [450] A. I said, or rather the captain would have advised us.

"Q. And you now wish us to understand that even if they had been on board, their names would not have appeared on the manifest or passenger list? A. I know they

were not on board, because every time one of the directors wants to make a trip they come to me and get a free passage.

"Q. That may be so, but that was not quite my question. A. No, that is correct. If they had been on board, we would have been advised by the captain some way or other about these people being on board.

"Q. I quite understand that that is what you are telling us, but I am trying to get the significance of your first statement about manfest and passenger list. A. I corrected that, and I said instead of manifest 'or rather the captain would have advised us that they were on board.'

"Q. And now my question is, having corrected that earlier statement, do you wish us to understand that had they been on board, the manifest and passenger list would not have shown it? [451] A. If they had been on board as passengers, the passenger list, the manifest or the crew list would definitely have shown it.

"Q. And you would have these lists here? A. I do not think we have, because as far as I can remember most of the papers went down with the ship.

"Q. Do you not have copies? A. I do not think so.

"Q. Is there any way in which you can make certain whether or not you do? A. I do not know where all the papers are, but we can try to find out.

"Q. Well, perhaps we can get at it this way: What papers do you customarily receive when one of your ships was being operated under charter? A. The only thing we got was a list from the captain regarding the passengers carried.

"Q. What was the purpose of that list? A. On the cost for one thing. That comes in. You have to figure out the victualing of the crew and passengers, and to enable us to collect passenger money from the Black Diamond Line.

"Q. Had it to do with the financial arrangements under the charter? [452] A. Well, of course, we have to collect passenger fare when the Black Diamond carry passengers.

"Q. For their food? A. Yes.

"Q. What, if anything, did you customarily receive when Herlofsen vessels were being operated under charter with respect to the cargo? A. Well, there was a fixed time charter rate.

"Q. Yes. Did you receive some report as to the total quantities of cargo carried? A. Whenever the Captain left the last discharging port he cabled us date of departure and actual tons carried. That is all we had.

"Q. Did you receive at the conclusion of each voyage under the charter a cabled report as to the total tonnage carried? A. No, at the beginning of the trip.

"Q. Then did you not mean to say that the Captain cabled you on sailing from loading port—his last loading port? A. That is correct.

"Q. You received no details of what cargo was carried? A. None whatsoever.

[453] "Q. In the charter party of the 'Black Gull' Jolund Exhibit 10"—that is Libelants' Exhibit 42—"you have excluded certain cargo, have you not? A. That is correct.

"Q. What assurance did you have with respect to any voyage, that cargo excluded by the charter was not in fact being carried? A. That would have been a breach of the charter party and could be sued.

"Q. But you were not interested in buying lawsuits, you were more interested in seeing the vessel was operated in accordance with the charter. A. Definitely.

"Q. How did you, and by you I mean Sigurd Herlofsen & Co., undertake to assure yourselves that the vessel was being operated in accordance with the charter? A. Well, of course, if you enter into a long agreement over ten years with a firm, there is naturally a mutual trust.

"Q. I would assume that that would be necessary, but did you not take some measures to assure you that your

trust was not misplaced? A. The captain on board the ship has a copy of the charter party.

[454] "Q. Yes, and what purpose would that serve? A. The charter party stipulates really what kind of cargo should not be carried.

"Q. Did you understand that Sigurd Herlofsen & Co. relied on the master of the ship to see that cargo which was forbidden by the charter was not loaded? A. We relied on the captain to that extent.

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

"Q. What was the situation with respect to ships chartered to Black Diamond Line? A. There the agency representation was completely in the hands of the Black Diamond Line.

[455] "Q. Do I understand by that that the agents of Black Diamond Steamship Corporation acted also as agents of Sigurd Herlofsen & Co.? A. No, I would not say that.

"Q. Then I must have misunderstood your earlier answer. You told us that when a general cargo ship of Herlofsen is to enter a port, she must have an agent. I understand you to say also that if that general cargo ship was under contract to Black Diamond, but what did you say—tell me that? A. When a ship under charter to the Black Diamond comes into port they use Black Diamond's agents exclusively.

"Q. Then am I not correct in assuming that to the extent that an agent was required for the ship in a port, a ship

for charter to Black Diamond employed Black Diamond's agents as its agents? A. I think the charter party clearly stipulates that the appointment of agents for all purposes are in the hands of the Black Diamond Line.

"Q. Where do you find that? A. There may be a separate contract with Black Diamond and us. The only thing I can find, the charter party stipulates that the intended trade is Atlantic [456] Coast/North America/U. K./Continent/Hamburg/Bordeaux range, as the charterers or their agents shall direct. In other words, it says here that the ships should be in the hands of the charterers and their agents.

"Q. Then, unless there was some separate contract with Black Diamond, Herlofsen was using Black Diamond's agents as its agents at the ship's ports of call, is not that true? A. I would not put it exactly that way. As long as the charters have an agent that looks after the pilotage, clearance and stevedoring, there is no need for the owner to have an agent.

"Q. In effect, then, what you are saying is what I have just said, that Herlofsen was utilizing the services of Black Diamond's agents as its agents at the various ports of call? A. I would say there is no agreement whatsoever between Sigurd Herlofsen and the agents at the Black Diamond ports of call.

"Q. You say you would say that. Do you mean that by that there was not? A. There was no contract between any of the Black Diamond agents and Sigurd Herlofsen & Co.

"Q. And if the Black Diamond agents performed [457] any service for the Herlofsen ships, including the 'Black Gull,' their compensation then must have come to them from Black Diamond Steamship Corporation and not from Herlofsen? A. They got nothing from us.

"Q. You told us that once a year there was an accounting between Herlofsen and Jolund, is that correct? A. I

did not say once a year, but every year Jolund has to furnish its accounts.

"Q. Jolund has to furnish them? A. Jolund's accounts are written like this (pointing to a printed portion pasted into a book, being two printed sheets dated April 29, 1954).

"Q. I do not understand why Jolund must furnish an account. Is that an account which it must furnish to Herlofsen? A. That is an account that it furnishes to its shareholders, according to Norwegian law.

"Q. Now, what I was trying to find out was how frequently and in what form does Herlofsen, as manager, account to Jolund as owner? A. There is only once a year with Jolund's annual account.

"Q. Do I understand, then, that there is no [458] accounting from Herlofsen, as manager, to Jolund, as owner? A. The Jolund Company has separate books that are kept separately. It has separate bank accounts. These are audited once a year and then sent to the shareholders.

"Q. Yes, but Jolund as a company has appointed Herlofsen as a company to manage Jolund's ships? A. Correct.

"Q. Now, is there not at some time an accounting by Herlofsen, as manager, to Jolund, as owner, of what Herlofsen has done with the moneys received for Jolund's account, and the moneys paid out for Jolund's account? A. No, you see there is no money paid from Jolund to Sigurd Herlofsen or vice versa. Every earning that comes in for Jolund's ships goes into Jolund's separate account. Any payments made goes out of Jolund's separate account.

"Q. So that, if I understand correctly, we do not have a situation in which the moneys received go into the Herlofsen account in the first place? A. No. There might be a certain case where the agents abroad slips up and sends the money to Herlofsen instead of to Jolund, but then

the money [459] is immediately transferred to the Jolund account."

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"Q. Are you yourself connected in any way with the Norwegian Veritas? A. No.

"Q. Does Sigurd Herlofsen & Co. have any representative on the directorate of Norwegian Veritas? A. Not as far as I know.

"Q. Does Skips A/S Jolund have any representative on the directorate? A. Not as far as I know.

"Q. The classification given by Norwegian Veritas to any ship relates to her fitness to sail as a ship, does it not? A. Correct.

"Q. It has no relationship whatever to her fitness for a particular cargo? A. There are different classes in Norwegian Veritas for that purpose.

"Q. By that you mean that there is a different classification for tankers, that is to say, than for general cargo ships? A. As far as I know, that is correct.

"Q. But it is true, is it not, that dealing with [460] general cargo ships alone, the classification relates merely to ability to sail safely, and not to fitness for a particular kind of general cargo? A. I would prefer you ask that question of Captain Svendsen. I think, of course, there is a difference in classification of a ship that carries ordinary cargo and reefer cargo, and I also think there are certain classifications for ships that carry fire extinguishing apparatus like $C. O_2$, but I am not sure.

"Q. You would prefer we asked Captain Svendsen—he knows more about it than you do? A. Definitely.

"Q. Now, you told us in general that the system which was employed by Herlofsen in the selection of officers and crews for the vessels which it managed, and you told us that that system was followed with respect to the employment of the officers and crew of the 'Black Gull'? A. That is correct.

"Q. Well, you do not mean us to understand, do you, Mr. Herlofsen, that every member of the crew beneath the rank of officer was personally selected by this Captain Welton? [460a] A. No. I said Captain Welton selected the captain and the deck officers. Our technical department selects the engineers, and his staff, while one of the employees in the crew department selects the ordinary crew.

[461] "Q. Well, now, the 'Black Gull' was not trading in and out of Oslo in 1952? A. No, she was not.

"Q. Are we to understand that if a member of her crew, a seaman or a messboy or steward, or someone in that category left the ship, or died at some port other than Oslo. did this employee of Sigurd Herlofsen go to whatever port that occurred at and select a man to replace him? A. If at all possible on the Black Diamond ships, being as close as they are, we, if time permits send the crew from here.

"Q. I am not speaking of a complete crew. A. No, just replacements.

"Q. And these, I take it, were usually of Norwegian nationality? A. They were.

"Q. We know that one of the messboys on the 'Black Gull' on the voyage commencing in July 1952 from Rotterdam was a Belgian? A. That is correct.

"Q. Was he selected by your company? A. No. I said that ordinarily, if time permits, we send replacements from Norway. If time does not per- [462] mit we have to take replacements from abroad.

"Q. And where you have to take replacements abroad, who is it who employs them? A. Then the Captain employs them.

"Q. And was that also true in June/July 1952? A. That has always been the custom.

"Q. And so far as you know, that custom prevailed at that time? A. Yes.

"Q. Then, in addition to relying on the master of your ship to see that no cargo not permitted by the charter was loaded, you also entrusted him with hiring replacements of

the crew if there was no time to send someone from Norway? A. Yes, because he was the man who could judge better than anyone else what he needed.

"Q. Where is Captain Wellton now? A. Retired, and living in Oslo."

Then Mr. Pyne stated for the record:

"If Mr. Zisgen so requests or desires, we will endeavor to produce Captain Wellton, and I ask Mr. Zisgen to state for the record, either now or before we leave Oslo, whether he desires Captain Wellton produced, because I do not want to hear any criticism later that he has [463] not been produced."

Now to that request there was no response, either then or at any other time.

"Q. You told us, Mr. Herlofsen, that you received no copies of the bills of lading for cargo carried on vessels chartered to Black Diamond, and no copies of the ships' manifests. Did you or did you not receive copies of stowage plans? A. No, we did not.

"Q. Throughout the period of the charter, Jolund Exhibit 11"—which is now marked Libelants' Exhibit 42—"do I understand that the 'Black Gull' was never in Oslo? A. Never during the charter with the Black Diamond Line.

"Q. Then how and by whom was Herlofsen advised that repairs were needed, or painting had to be done, or the vessel had to be drydocked or anything of that sort? A. Answering the last question first, we have a system whereby we drydock the vessels at certain periods. That we decide ourselves. With regard to repairs to be effected ashore, the Captain always has instructions to let us know well in advance what repairs he contemplates doing.

[464] "Q. And when he advises you that certain repairs are necessary or desirable, what was your practice? A. If the repairs are of major importance, we usually ask for bids from different yards. If the repairs are of a minor

nature, we give the Captain authority to perform the repairs best possible.

"Q. So there again you rely on your master in another respect? A. I cannot very well check my master's statement that the vessel needs painting. That must be to him to decide.

"Q. Now, necessarily, drydocking or major repairs involves withdrawing the vessel from service in the charter for a shorter or longer period? A. Correct.

"Q. Now, what was the practice of Herlofsen & Co. in June and July 1952, and before that, in advising the charterer that withdrawals were contemplated? A. Well, we always like to consult with the charterers before drydocking, because we wanted to find out which port was most convenient for the charterers.

"Q. And with whom in Black Diamond Steamship Corporation did you communicate? A. We just sent a letter or cable to the Black [465] Diamond office.

"Q. Where? A. In New York.

"Q. And what usually happened then? A. Well, they usually agreed on some port. We usually said we need to drydock the vessel within a certain period, we can do it either here or there at certain prices, what is most convenient for you?

"Q. And did you as a rule receive a reply from New York, or from one of the other ports? A. In certain cases, where it was drydocking to be performed in Europe, the Black Diamond Line in New York naturally consulted with their European agents, and we might have had some replies from them."

• • •

By Mr. Zisgen:

"I call for the production of the reports made to Sigurd Herlofsen & Co. by the master of the 'Black Gull' at the conclusion of the seventeen voyages prior to that of July

1952, on which, according to the list of shipments handed me by Mr. Pyne in Antwerp, the vessel [466] had carried naphthalene on deck, and also for any reports with respect to those voyages not made at the conclusion of them."

Mr. Pyne: Well, I will find the place in the record where that call was complied with, your Honor, for continuity. * * * I think it was during the examination of Captain Svendsen.

Mr. Pyne: If I may say this at this point, your Honor, and I do not think there will be any question or dispute about it, during the examination, as I recall it, of Captain Svendsen, a large volume of those reports was produced and marked for identification and made subject to examination by the cargo interests or the claimants, and then forms of the reports themselves were marked in evidence—they are in Norwegian except one, and on the Norwegian copy there was written in in English the translation of them, but I think perhaps we will save time if we wait——

* * *

[467] "Yesterday, Captain Svendsen, a call was made here for the production of certain records. To the best of my recollection (1) voyage records of the 'Black Gull', and (2) Passenger lists, or some record with respect to passengers on the 'Black Gull'. Have you at my request searched the offices here and produced all such records which are available? A. Yes, I have.

"Q. Now, will you tell us, one by one, just what those records are that you have brought here? A. Our system is that we have one record sheet for each port the vessel calls at.

"Q. And what do you call that record sheet? A. Yes, we call it a port record.

"Q. By whom in the regular course is that record prepared? A. It is prepared by the chief mate, and signed by him and the master.

"Q. And then, in the regular course, what is done with that sheet? A. The sheet is sent to the home office and kept here.

[468] "Q. That is the office here at Oslo? A. Yes.

"Q. And checked, and then filed away? A. That is right.

"Q. Now can, and will you produce the latest of these sheets which you have for the 'Black Gull'? A. Yes. I actually have here all of them from when the vessel actually was built, but I presume you are mostly interested from the start of the Black Diamond Line. Then I will produce all port records from January 1st, 1950, and up till July 1952.

"Q. Now, you are now handing me two folders, which contain each of them a considerable volume or number of documents. Do these two folders contain all of the records during the 'Black Gull's' charter to Black Diamond Steamship Corporation? A. No, there are still a few more here. In a third folder.

"Q. Then please give me the third folder. Now I will ask that each of these three folders please be marked as Exhibit 16(A), 16(B) and 16(C), as of this date, for identification.

"Captain, at my request, have you produced one of the printed forms, not filled in, which are used for [469] making the reports of the type that you have mentioned, shown in Exhibit 16(A), (B) and (C). A. Yes.

Mr. Pyne: Then I asked that they be marked for identification, and with the consent of the other proctors I asked the interpreter to please write in in English over, under or alongside each of the Norwegian words the English translation.

• • •

I will offer 16(D) in any event. It is a copy of the form, and as the records show, all the forms for the entire period of Black Gull's operations under that charter to Black Diamond Steamship Corporation, the final forms filled out were produced and made available to the proctors and then merely for the form—we did not introduce any of them for the reasons that I think will be obvious when your Honor sees that form.

(Marked Petitioner's Exhibit G.)

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[470] Captain Svendsen was asked • • •

"In addition to the documents already marked and referred to, what other or further document or documents relating to the 'Black Gull' have you brought here today? A. I have also brought the Voyage Reports. This is a report which is filled in on board for each voyage between two ports, and sent to the office.

"Q. And they cover what vessel, and for what period of time? A. These reports cover the 'Black Gull' from the time she was built, May 1948, until July 1952."

And then I asked that the voyage reports be marked for identification as exhibits 17(A), (B), (C) and (D), and I stated: "the captain having produced three cardboard folders each with a considerable number of papers in them."

Then he was asked: "Is the printed form, not filled in, which you have presented, the same type of printed form used by Sigurd Helforsen & Co. A/S for [471] Voyage Reports, and particularly for the 'Black Gull's' voyage reports? A. Yes, it is."

And I ask that that form of the Voyage Report similarly translated by the interpreter in pencil be marked and I offer it in evidence.

(Marked Petitioner's Exhibit G.)

(The Court examines.)

Deposition of Captain Inge Svendsen
Deposition of Peter Didrick Herlofsen

Mr. Pyne: Then Captain Svendsen was asked:

"Except, Captain, for financial records concerning the 'Black Gull', have you now produced here all of the reports, logbooks or records, sent in by the masters or crews of the vessel? A. Yes, for maritime purposes, but the masters do send us a statement of their passengers.

"Q. Have you got a statement concerning the passengers? A. Well, I am sorry I have not been able to get all on the 'Black Gull', but I have a certain number of those statements, which will show you what we got from the vessels.

"Q. Will you present the latest one in date for us? A. That is on voyage 20, and that is 19."

And I asked that that document be marked as [472] an exhibit for identification. It was presented, it was marked, and I offer that also in evidence.

It shows exactly the type and kind of report concerning passengers which was sent in.

(Marked Petitioner's Exhibit I.)

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Coming back, then and continuing—I believe this is a continuation of the cross-examination of Mr. Zisgen of Mr. Herlofsen, at the top of page 33:

"Q. . . . Now, did Sigurd Herlofsen & Co. or Skips A/S Jolund, furnish its masters with any written instructions? A. No. We have always found it difficult and inadvisable to tie the Captain's hands. So many things may come out that we cannot foresee in this office.

"Q. So that whatever instructions they may have had were oral instructions, is that correct? A. Yes, probably.

"Q. And I take it from what you told me a little [473] while ago, that any oral instructions they may have would

come from the heads of these separate departments you mentioned? A. Yes, probably.

"Q. Now, you know, of course that the 'Black Gull' in operating for Black Diamond Steamship Corporation under this charter, would operate in ports of Germany, Holland, Belgium and the United States? A. Yes, we did.

"Q. And you knew that each of these countries had, or might have, laws regarding the operation of the ship? A. Yes.

"Q. And you knew that each of these countries might have laws with respect to what cargo could be carried, did you not? A. Yes. That was why we could not issue any instructions here.

"Q. And you know that each of these countries had, or might have laws with respect to the manner in which certain cargo could be carried, did you not? A. Yes.

"Q. What familiarity did you or Sigurd Herlofsen & Co. have in June and July 1952 concerning any of those [474] laws, Mr. Herlofsen? A. We were not familiar with the different countries' laws to any extent.

"Q. Well, had you at that time made any effort to find out what those laws required? A. No, I do not think we had."

• • •

"Q. Mr. Herlofsen, as I get the picture, Skips A/S Johund as a corporation did not itself have anything to do with the operation of the 'Black Gull'. A. No, that was left to Sigurd Herlofsen & Co.

"Q. Sigurd Herlofsen & Co. were in fact the operators? A. Correct.

"Q. Sigurd Herlofsen & Co. in turn had no agents which it directly appointed in the vessel's ports of call? A. Not for the Black Diamond ships.

"Q. And that included the 'Black Gull'? A. Correct.

[475] "Q. And it relied on Black Diamond Steamship Corporation or Black Diamond's agents to perform what-

ever had to be performed in the various ports of call on the ship's behalf? A. That is correct.

"Q. It relied on the Black Diamond Steamship Corporation or Black Diamond's agents and the master to see that only such cargo was carried as was permitted by the charter? A. Obviously, for the simple reason if we should have anything to say with regard to the stowage of cargo we cannot very well say it here, and accept and refuse cargoes that is booked up daily, almost the last hour before sailing.

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried or stowed, was vested in the master and in Black Diamond? A. I would say vice versa—Black Diamond and the master.

"Q. And why do you prefer to put it in that order? A. Because I think it is the Black Diamond Line or their agents who supply the stowage plan to the Captain.

"Q. And in your opinion, it is Black Diamond Steam- [476] ship Corporation which has the primary right to determine what cargo shall be accepted and what cargo shall be refused, and how the cargo accepted is stowed? A. They can determine that, always subject to the master's approval."

• • •

"Q. Do you recall any instance in which there was a dispute between the charterer and the master, which the master referred to Sigurd Herlofsen & Co. for determination? A. No, I cannot recall.

"Q. And during the whole period of the charter, you tell us Herlofsen & Co. never knew what cargo was to be carried in advance of its carriage? A. Well, you just asked me that question in a different way. You said if there was any times when the captain had to consult with us before accepting cargo, and I said not to the best of my knowledge.

"Q. And there was never the time during the period of this charter when Herlofsen & Co. ascertained after the

event that any particular cargo had been carried? A. Not to the best of my knowledge."

Now the following, your Honor, is the redirect [477] examination of the witness by myself:

"Q. Mr. Herlofsen, you told us that Sigurd Herlofsen & Co. A/S, if I recall your original answers to my questions, was either a limited company or a corporation? A. A limited company.

"Q. By that, do you mean that it is a company that issues shares of stock to stockholders? A. Correct.

"Q. In discussing Sigurd Herlofsen & Co., reference has been made to the partners of that company. Who first used the term 'partners' in connection with Sigurd Herlofsen & Co. I do not recall, but in any event I do recall that Mr. Zisgen asked you if there were four partners, to which you replied that there were three partners. Now can you or will you explain what you meant by using in connection with Sigurd Herlofsen & Co. the term 'partners'? A. I am afraid I did not make myself quite clear. When I said partner, I was referring to the directors—my father, Mr. Hvattum, and myself. I looked upon my mother not as a partner, but an ordinary shareholder.

"Q. In other words, you used the term 'partner' synonymously with the same intent and meaning as an offi- [478] cer or director? A. That is quite correct.

"Q. You were asked whether the 'Black Gull' had accommodations for a number of passengers, and you replied 'yes' in answer to Mr. Zisgen. What was the maximum total of passengers that vessel had accommodations for? A. She had accommodations for ten passengers.

"Q. In answer to my question on your direct examination, you stated that you had not received here at Sigurd Herlofsen & Co. copies of the manifests from the 'Black Gull'? A. That is correct.

Deposition of Peter Didrick Herlofsen

"Q. In so stating, what kind or type of manifest were you referring to? A. I was referring solely to cargo manifests.

"Q. And later, in connection with questions from Mr. Zisgen concerning passengers, you also referred to and used, if I recall correctly, the term 'manifest'? A. I did, and I corrected myself and said, rather passenger list.

"Q. At any event, in that connection, and when you did use the term 'manifest' in connection with passengers or questions concerning passengers, you were actually meaning passenger list or passenger memoranda of some sort? [479] A. I meant a passenger list, which we have for the sole purpose of collecting passage money from the charterers.

"Q. In connection with questions asked of you by Mr. Zisgen concerning repairs, you stated that you received reports or recommendations of some sort from the master of your or Sigurd Herlofsen's vessels, including the 'Black Gull'? A. I did.

"Q. Well, from time to time, and in the course of business, did Sigurd Herlofsen & Co. receive any other reports or surveys or recommendations with respect to repairs from any other source than the master? A. We, of course, received regular reports from the Classifications Institute, and whenever they demanded any kind of work done, that is always done immediately after the ship's arrival in port.

"Q. Reference was made to the receipt after the fire on the 'Black Gull' in July 1952 of log books or a log book, whichever it was. Do you have this log book available here? A. I think what you refer to is not log books. It was a single sheet of paper sent us after the expiration of every voyage, just showing us the time used for the [480] passage, the speed, the consumption and the course steered.

"Q. Well, apart from that single sheet or report, do you have or did you receive, to the best of your recollection, and do you have it available if you did receive it, any bound

book called or referred to as a log book of the 'Black Gull'? A. That I cannot recall, but it seemed to be the practice of every Captain when abandoning ship to bring with him the log book."

He was then asked if he looked for the log books, he did, and they were produced the following day during Captain Svendsen's examination, and they were produced here and were marked in evidence, and were marked for identification also at Oslo.

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"*Re-cross-examination by Mr. Stonebridge:*

"Q. • • • Mr. Herlofsen, in your discussions or answers earlier you state, I believe, that the Captain paints, and recommends repairs, drydockings, etc. to your head office here, well in advance if that is possible? A. Correct.

[481] "Q. Do representatives from your Marine Department attend the drydockings or repairs of your vessels? A. We have followed the practice of sending down men from our Maritime and Technical Departments at certain intervals to inspect the ships. If possible, they did that simultaneously with repairs of a major kind, while an ordinary routine dry-dock and ordinary routine maintenance is left in the hands of the master and his officers."

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The next deposition I would like to read, which is that of Captain Inge Svendsen.

• • •

[482] "Q. Where do you reside, Captain Svendsen? A. At Gamle Jkelsasveien 3, Grefsen, Oslo.

"Q. Do you hold any license from any Government Authority for Marine or vessel service? A. Yes. I hold a Master's license—a Norwegian Master's license.

Deposition of Captain Inge Svendsen

"Q. And for how long have you held a Norwegian Master's license? A. For ten years, since 1945.

"Q. And does that license cover all oceans and waters? A. Yes.

"Q. Prior to having a Master's license, did you have any other license or licenses, and, if so, what other, and for how long did you hold them? A. I held a Mate's license from 1929, and I also held a Wireless Operator license from 1930.

"Q. Did the Mate's license permit you to serve as Chief Officer on ocean-going Norwegian vessels on any ocean? A. Yes.

"Q. Have you had any sea service? A. Yes, I served since 1925, rather from 1925 [483] and up til my last sea duty in 1953.

"Q. When you served from 1925 at sea to 1953 was that service as an officer, or does that include sea duty prior to your becoming a licensed officer? A. That includes the duty prior to becoming a licensed officer.

"Q. And was that duty on ocean-going vessels? A. Yes.

"Q. What type of vessels were they—cargo, passenger, or what did you serve on? A. I served on dry cargo vessels for practically all the time. I did serve on tankers for about half a year or so.

"Q. If I understand you correctly, your last sea service was some time in the year 1953? A. Yes, that is correct.

"Q. And from that time down to now, what has been your occupation and service, and in whose employ? A. I have been employed at Sigurd Herlofsen & Co. in their Marine Department.

"Q. And has that been employment ashore? A. Yes, in the office here.

"Q. And here in their office at Oslo? A. Yes.

[484] "Q. Prior to that service ashore, and in the office here in Oslo, did you serve on any vessels operated or

managed by Sigurd Herlofsen & Co.? A. Yes, I served on three vessels managed by Sigurd Herlofsen.

"Q. And prior to serving on any vessel or vessels operated or managed by Sigurd Herlofsen & Co. A/S, did you serve at sea on any vessel or vessels owned or operated by other companies or owners? A. Yes, I did serve in vessels owned and operated by the Norwegian America Line for a very great length of time.

"Q. Any others? A. No.

"Q. Have you ever served on an Isbrandtsen vessel or vessels? A. I have served on a Norwegian vessel on time charter to Isbrandtsen, prior to the war.

"Q. You have previously mentioned as other companies only the Norwegian America Line? A. Yes, that is, as owner of that ship, that was the Norwegian America Line, but the ship was on time charter to Isbrandtsen.

"Q. And in what capacity were you on this [485] Isbrandtsen-Moller or Norwegian America Line vessel or vessels? A. On the ship that we chartered to Isbrandtsen-Moller I was Chief Officer.

"Q. For how long? A. For practically four years.

"Q. Your present duty or duties here in the employ of Sigurd Herlofsen & Co. A/S are what? Will you describe them for us? A. Well, at present, I am head of the Marine Department, and I have under me the Crew Department, engaging crew, and I am also naturally doing some work in connection with the survey of the vessels or maintenance of the vessels at the present time.

"Q. And when, as nearly by date, month and year as you can state it from your recollection, did you become head of the Marine Department of Sigurd Herlofsen & Co. A/S? A. January 1st, 1954.

"Q. Do you know who preceded you as head of that Department? A. Yes. Captain Wellton.

"Q. Do you know where Captain Wellton now is? A. Yes, he is here in Oslo.

[486] "Q. Is he in the employ of Sigurd Herlofsen & Co. A/S? A. No. He is retired.

"Q. When you say he is retired, will you explain further what his status is so far as the company is concerned? A. Well, he has left the employ of Sigurd Herlofsen & Co., and he is living on a pension.

"Q. Does, or does not Sigurd Herlofsen & Co. A/S have any control or say in that pension, that is, could they or could they not affect it one way or the other? A. They cannot affect it. It is State controlled.

"Q. Did you at my request communicate with Captain Wellton with respect to him coming here to testify? A. Yes, I did.

"Q. When did you do that? A. Yesterday afternoon, about six o'clock.

"Q. Will you tell us what was said, back and forth? A. Well, I told Captain Wellton that I called him on the telephone, I told him that he might be asked to come here today to answer certain questions. Then he replied that he did not feel that his health permitted him to come down here, and furthermore he stated that as I was here working in the office at [487] that time, he stated that as I was here working in the office at that time, I would probably know the same as he knew from that period.

"Q. Do you know anything yourself personally as to the condition of Captain Wellton's health? A. Well, shortly before he retired he had a serious liver operation. That was the end of 1953, and since that he has not been very strong, and he is definitely not in very good health. He is 63 years of age.

"Q. Now, in the daily work here at Sigurd Herlofsen, will you tell us whether or not the organization is divided into departments, and, if so, what departments? A. Yes, in the daily work we divide in the Maritime and Technical Department, and we also have an Accounting Department. These three are the main division of the firm.

Deposition of Captain Inge Svendsen

"Q. With respect to repairs or maintenance of vessels operated or managed by Sigurd Herlofsen & Co. A/S, do you have any duties, and have you had any duties or work to do, you personally? A. The repairs are divided. If it is strictly a technical matter it will be handled by our Technical [488] Department, but maritime matters, handling things that have to do with deck, then I have had something to do with repairs and maintenance, and also survey or inspection or whatever you want to call it.

"Q. Now, in connection with that work do you from time to time, or on occasions, visit or go aboard these vessels of that company, or operated or managed by that company? A. Yes, I do.

"Q. I will ask you whether in that connection you at any time were aboard the 'Black Gull'? A. Yes, I did.

"Q When were you last aboard that vessel? A. In November 1951.

"Q. And where was she then? A. She drydocked at Baltimore, Maryland.

"Q. At what shipyard? A. She was in Maryland Dry Dock.

"Q. And when you boarded her, was she then under repair? A. Yes, she drydocked and shifted propeller.

"Q. Did you not make at that time yourself any inspection of the vessel? A. Yes, I did inspect her. I went through very [489] thoroughly.

"Q. And did that inspection include all her hull, and appurtenances and equipment? A. Well, to the extent that you could do it during such a period, I would say yes.

"Q. And were you there when she completed whatever repair work was being done? A. Yes, I was.

Q. Will you tell us what the general nature was of that work? A. The general nature was shifting of propeller.

"Q. As a result of your inspection of that vessel, what did you find to be her condition at that time, as to hull,

appurtenances, equipment, engines, etc.? A. I found her in a very good condition.

"Q. In June and July 1952, were you then employed by Sigurd Herlofsen & Co. A/S? A. Yes.

"Q. And may I ask where at that time you were employed? A. I was in the Marine Department in the office in Oslo.

"Q. And for how long a period of time prior to June and July 1952 had you been in the Marine Department [490] at Oslo? A. I had been in the Marine Department at that time during 1951 and the first part of 1952, but I did work partly in the Marine Department for Captain Wellton also prior to that time, but I just had the work given to me by Captain Wellton. For instance, I might be sent out on a ship as a Captain, or anything that he thought he needed me for.

"Q. You just assisted Captain Wellton, in other words? A. Yes.

"Q. And having told us that you had last gone to sea in 1953, then you must have gone to sea some time after June/July 1952? A. Yes, I did. I went out as a relief Master in a tanker in 1953.

"Q. And that was your last actual sea service? A. Yes.

"Q. And then, when Captain Wellton retired, you took his position or place? A. Yes.

"Q. Now, in June and July 1952, and prior to that and during the time you were employed herein the office at Oslo, was there or was there not any system or [491] routine with respect to the engaging or hiring or appointing of Masters, Officers, both deck and engine room, and crew of the vessels operated by Sigurd Herlofsen & Co.? A. Yes.

"Q. Now, what was that routine or system? A. To take officers first, anyone applying for a job would be asked where he served prior to applying, and we keep very detailed reports for all officers, sent in every six months, and if

the man had been in our service before, well then we knew everything about him, and we could decide immediately whether to employ him or not. But if not, then we would find out where he had served, and we would call the company in which he served before.

"Q. For what purpose? A. To find out what type of a man, and of course the first thing we would do would be to find out whether he had a license for the job he applied for.

"Q. Now, does that cover both deck and engine officers? A. Yes, it does.

"Q. And how about members of the crew other than the vessel's officers, what was done in that respect [492] as to them? A. Well, the crew taken here in Norway. We do not have the same system with half-year reports for crew, but every time a man pays off we will put down on his card, we have a card system, anything that the Master has to say, whether he is a good man or whether he is no use to have, and we will look him up too and see if he is all right if we have had him before, and at least, if it is a man in some position like a bo'sun, carpenter or even an A.B., we would also in that case call the company he has served in before. But when speaking about crew, occasionally, of course, we take crew in ports outside of Norway, I mean in the ports where the vessel actually calls, and if so then of course we have to leave to the Master the decision.

"Q. Now, in connection with the Master and other officers and the crew of the 'Black Gull,' can you tell us from your own knowledge whether or not that system was followed concerning those who were aboard and manning that vessel in June/July 1952? A. Yes, for the officers definitely. For the crew there might be someone that have been signed on outside the country.

[493] "Q. Do you have and keep at the office here in Oslo in the usual course of routine, all the officers' lists, crew lists which show all the officers and crew of a par-

ticular vessel at a particular time? A. Yes, we do. We get crew lists from every one of our vessels every month.

"Q. And do you have such a crew list for the 'Black Gull' during June/July 1952? A. Well, June/July was not sent in because they were sent in the last day of the month, so I have them up to and including May 1952.

"Q. In other words, the last one that you have for the 'Black Gull' is the one that existed at the end of the month of May 1952? A. Correct.

"Q. What, insofar as you know, occurred with respect to the crew list for the end of June 1952? A. It was probably not sent us, because the May list is dated June 11th. With other words, the lists are made up a little later or rather when the month is finished, but we do make one for every month.

"Q. In any event, you do have a list for the end of May 1952, which was made up and dated insofar [494] as shown on the list, and sent to the office on the 11th June 1952. How would that list be sent to you? A. By air mail.

"Q. Now, as to the number and capacities of the officers and crews required on Sigurd Herlofsen vessels, and I might add, on any Norwegian vessels, who fixes or determines the number, and the rank or rating of the officers and crew? A. The Norwegian Sea Control gives every ship a document stating how many officers and crew every or any vessel should carry.

"Q. Was there, to your knowledge, such a certificate issued by the Norwegian Ship Control, or Sea Control, whatever its proper title may be, for the 'Black Gull'? A. Yes.

"Q. Do you know where the original of such certificates or lists are kept in the regular course of business? A. The original is kept on board the vessel.

"Q. And does Sigurd Herlofsen & Co. A/S, in the regular course of its business, keep and maintain a copy of that list here at its offices? A. Yes.

Deposition of Captain Inge Svendsen

[495] "Q. I will show you a list, or show you a paper, and ask you whether you can identify it? A. Oh, yes. Yes, I can. This is the manning statement for the 'Black Gull.'

"Q. I notice on one side of this document, one side is in Norwegian and the reverse side in English. Can you tell us whether or not the English and the Norwegian are the same statements, except of course in different languages? A. Yes, they are the same statement."

And I asked then at that time that that list be marked for identification, it was so marked and I now produce it and offer it here in evidence, your Honor.

(Marked Petitioners' Exhibit J.)

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[496] "Q. I will ask you also, Captain Svendsen, please to produce the last crew list from the records and files of Sigurd Herlofsen for the 'Black Gull,' to which you have already referred? A. Yes."

It was produced and that is the one for the end of May, which the witness conceded was dated June 11, 1952. It was offered then and I will offer that in evidence now.

(Marked Petitioners' Exhibit K.)

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"Q. Are you acquainted with the passenger accommodations existent on the 'Black Gull' as of the date you were last aboard of her, to which you have testified, namely, November 1951, at Baltimore, Maryland? A. Yes.

"Q. Can you tell us what the maximum number of passengers was for which there were such accommodations? A. Ten.

"Q. Will you tell us, Captain Svendsen, what the routine was with respect to Log books, both deck [497] and engine room, of the Sigurd Herlofsen vessels, as to where these Log books were and in the regular course of busi-

ness would be kept and maintained? A. All Log books will be maintained on board the vessel, unless an accident or something happens, so that it will be taken off the ship for investigating purposes.

"Q. Regardless of the date or dates or prior dates which are covered by the Log books, both deck and engine room, of the Sigurd Herlofsen vessels, and in the absence of any special reason, such as an accident or other cause for taking the Log books elsewhere, where are the books kept? A. On board the ship.

"Q. Are any of them kept and maintained here at the offices of Sigurd Herlofsen & Co.? A. No.

"Q. Do you have here at Sigurd Herlofsen's offices any Log book or Log books pertaining to the 'Black Gull'? A. Yes.

"Q. Will you produce those Log books? A. That is the smooth and rough log for the time of the accident, which was taken ashore by the Master for use during the maritime declaration.

[498] "Q. You are now producing two books? A. Yes.

"Q. Have you made a search to determine whether or not there is any other Log book or Log books relating to the 'Black Gull' here at the office of Sigurd Herlofsen & Co., or anywhere else outside the office that you know of, except these two? A. There is definitely no other Log books. The rest of the Log books went down with the ship."

Mr. Pyne: Then the two Log books which already have been marked in evidence here, your Honor, were marked for identification on the deposition.

About a third of the way down page 75:

"Q. When you were aboard the 'Black Gull' in November 1951, can you tell us whether or not there were any sign or signs concerning smoking, and if there were, what

they were and where they were, and describe them to the best of your ability?"

Mr. Zisgen: If your Honor please, I object on the ground it is immaterial, because the time as of which this question is asked is too remote.

The Court: November 1951?

Mr. Zisgen: Yes, your Honor.

The Court: I do not think it is too remote. It may affect the weight a little bit, but it is [499] certainly admissible. The objection is overruled.

Mr. Pyne: (Continuing)

"A. Well, there were signs painted on the midship house, 'No Smoking', and in the cabins we have markings for no smoking, and also for not throwing cigarette butts out of the portholes.

"Q. Insofar as concerns the 'No Smoking' signs which you say were on the midship house, can you give us any further or better description as to their location? A. I cannot say exactly where they were painted, but we usually have at least one at the entrance where we have the gangway, and one in the aft part of the midship house. I cannot remember now how the signs were placed on the 'Black Gull.'"

• • •

"Q. Now, Captain, did you at my request make any investigation as to the present whereabouts of all of the officers, both deck and engine room, who were serving on the 'Black Gull' in June and July 1952? A. Yes, I did.

"Q. Will you tell us what investigation you made, and when you made it, and what you found out as to [500] the whereabouts of those persons? A. We have a Central Register for Seamen in Norway, where we get information as to where the men are at the present time, and I have called this office, and so far as I have been able to find out

none of the officers or crew are at present in Oslo or in the vicinity of Oslo.

"Q. Throughout the time, Captain, that you have been employed by Sigurd Herlofsen & Co. A/S, whether that employment was at sea or whether it was here at their offices, have you yourself ever discussed with any officer or director of Sigurd Herlofsen & Co. or Skips A/S Jolund, or with any department head or 'boss' of either of the companies, any question or questions prior to the time of the 'Black Gull' fire, July 18; 1952, with respect to what cargoes were carried, loaded or stowed, on either the 'Black Gull' or any other vessel chartered to Black Diamond Steamship Corporation, or where on the vessel the cargoes were stowed, or how they were stowed? A. No.

"Q. Did you, throughout all of that time, ever hear yourself, or know of any such discussion between any officer, director, 'boss' or department head, [501] either of Skips A/S Jolund or Sigurd Herlofsen & Co., and any Master or officer of any vessel so chartered? A. No."

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• • • some of Mr. Zisgen's cross-examination of Captain Svendsen.

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"Q. Captain Svendsen, was there any cargo on board [502] the 'Black Gull' when you were aboard her at Baltimore in November 1951? A. No, she was empty.

"Q. Do I understand that you have never been aboard her when she had cargo on board? A. No, that is not correct.

"Q. When were you last on board her when she had cargo on board? A. I am not able to say, but at least I was on board her in the later part of 1949 with cargo on board.

"Q. Where was that? A. In Antwerp."

Deposition of Captain Inge Svendsen

Page 81, at the top of the page:

"Q. When you were sailing as Chief Officer and Master of vessels prior to becoming Marine Superintendent, or office employed, did you ever carry naphthalene? A. Yes.

"Q. Did you ever carry naphthalene on deck? A. Yes.

"Q. When you carried it, was it or was it not covered? A. It was in bags. No special covering.

"Q. When the bags were stowed on deck on those occasions, was the stow of bags as a whole covered, or [503] was it not? A. No, it was not covered.

"Q. And between what ports did you carry naphthalene on deck as a ship's officer? A. As Chief Officer in the Isbrandtsen-Moller service, I carried naphthalene on deck from Antwerp Rotterdam to New York and Philadelphia for approximately two years, every trip.

"Q. And what two years were those? A. 1938 and 1939.

"Q. You have told us that Captain Weilton receives a pension. Do you know from whom he receives it? A. It is a pension fund that is paid in by Sigurd Herlofsen, but controlled by the State."

Page 85;

"Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stowed on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions, about.

[504] "Q. Ten occasions during that period? A. Yes.

"Q. Did you on any occasion mention that to Captain Wellton? A. No.

"Q. You kept that strictly to yourself? A. Yes, because to me it was nothing unusual. I had, as a Chief Officer, carried naphthalene on deck in just that same manner.

"Q. And you felt that it did not require any particular mention to your superior? A. Yes.

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it.

"Q. During that same period, Captain Svendsen, the Sigurd Herlofsen Co. was operating other ships which were not chartered to Black Diamond, was it not? A. Yes.

"Q. You were familiar with their operations? A. Yes.

"Q. Did you, or did Captain Wellton in your hearing, ever discuss with any of the officers or [505] directors of Sigurd Herlofsen & Co. during that period what cargoes were to be carried on those other ships, not chartered to Black Diamond? A. The other ships not chartered to Black Diamond are tankers.

"Q. All of them? A. Yes.

"Q. And was that true throughout that period from 1949 to 1952? A. No, we had one Liberty ship. That was sold in 1951.

"Q. Dealing only with the Liberty ship, she was a general cargo ship, was she? A. No.

"Q. What was the nature of her cargo? A. Well, bulk cargo.

"Q. In what trade or trades was she operated? A. Most of the time in the ore trade between Narvik and Antwerp.

"Q. Always carrying the same kind of cargo? A. Yes, always ore and nothing else.

"Q. Was anything carried back from Antwerp to Narvik? A. Nothing."

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[506] Mr. Zisgen: Your Honor, I should like to read a few questions and answer dealing with Cap-

tain Svenson's position in the Herlofsen organization.

The Court: Is this in the cross-examination?

Mr. Zisgen: It is, sir.

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"Q. When did you first commence office work under Captain Wellton? A. The first time I had anything to do in the office was for a very short period in 1947.

"Q. When next did you have anything to do with the office side of the work? A. I were in the office part of 1948, also part of 1949, two months of 1950, most of 1951, and then up until 1952. I was the whole year in the office in 1952 and part of 1953.

'Q. Now, when you first came to the office in 1947, what was the nature of your work? A. I only assisted Captain Wellton in making up some average claims.

"Q. General average claims? A. No, particular average claims, statements of [507] claims.

"Q. That is, particular average to the vessels? A. Yes.

"Q. Then when you next came to the office to do office work, which was in 1948, what work did you do? A. Only such work Captain Wellton asked me to do. Actually nothing particular, only what he needed me to assist him on.

"Q. Well, would it be fair to say that during that period in 1948 you assisted him generally in the various duties which he performed as your predecessor? A. Yes, I assisted him in certain of his duties. Yes.

"Q. Now, coming to the next occasion, which was in 1949, what did you do? A. It was the same as in 1948.

"Q. And in 1950? A. The same thing.

"Q. And in 1951? A. The same thing.

"Q. And in 1952? A. Same thing."

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[508] "Q. And it was January 1st, 1953, that you succeeded him? A. No, 1954."

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Deposition of Albert Zimmermann

"Q. Mr. Zimmermann, what is your occupation? A. A surveyor of the Norwegian Veritas.

"Q. How long have you been employed by Norwegian Veritas? A. From 1919.

"Q. During the time you have been with Norwegian Veritas, will you briefly outline for us over the years the nature of the work there that you have done? A. From the beginning I was at the main office. Later I have been employed out of Norway, at the shipyards and on board vessels, both during construction and during periodical surveys.

"Q. What is your present work or position with Norwegian Veritas? A. At present I go through and examine reports at the main office.

"Q. What kind or type of reports? A. Mostly periodical surveys and partial surveys consequent upon average damage.

[509] "Q. What is the nature or type of business which Norwegian Veritas does or performs? A. The purpose of the Norwegian Veritas is to produce a reliable and uniform classification of vessels, to work for safety at sea, and to further rational maritime underwriting.

"Q. Is any of the work done by Norwegian Veritas performed or done in connection with or under the authority of the Norwegian Government, or any branch of the Norwegian Government? A. In connection with the office of maritime matters under the government, the Norwegian Veritas has undertaken to carry out certain surveys on behalf of the Norwegian Government maritime authorities.

"Q. In the work and routine which you have mentioned of Norwegian Veritas with respect to classification of vessels, does Norwegian Veritas have different classifications? A. Yes.

"Q. What is the highest class, or how do you designate the highest class? A. Star 1A1.

Deposition of Albert Zimmermann

"Q. Did you personally at any time ever go aboard the Norwegian Flag Vessel known and called the 'Black [510] Gull', previously known and called the 'Herborg'? A. No.

"Q. Did you, at the request of Sigurd Herlofsen & Co. A/S, or its attorney, Alex. Rein, of Oslo, gather together and bring with you here today all records of Norske Veritas concerning that vessel? A. Yes.

"Q. Will you tell us whether or not those records were made in the regular course of business of Norwegian Veritas? A. Yes.

"Q. Were those records made at the times and of the dates, or within a reasonable time after the dates indicated on each and all of those various records? A. Yes.

"Q. On what basis or from what data or knowledge of your own can and do you make suc. statement? A. On the basis of such reports that existed.

"Q. Are you and were you at the times indicated in these reports, familiar with the regular course of business and routine of Norwegian Veritas in connection with the making receipt and filing in Norwegian Veritas' office here in Oslo, the documents in question? [511] A. Yes.

"Q. Was it the duty of the persons who made these reports and records to make these reports and records at the times in question and on or about the dates shown on them? A. Yes.

"Q. From these records will you tell us whether or not the motor vessel 'Black Gull' was classified by Norwegian Veritas? A. Yes.

"Q. Was that vessel classed by Norwegian Veritas? A. Yes.

"Q. When was she first classed? A. May, 1948.

"Q. What was her class? A. Star 1A1.

"Q. Is that the class which you have already mentioned as being the highest class? A. Yes.

Deposition of Albert Zimmermann

"Q. At any time, down to and including the 18th day of July, 1952, was there any change or alteration in that class? A. No.

"Q. Did the 'Black Gull' remain classed in the [512] class you have stated up to and including July 18, 1952? A. Yes.

"Q. Do the inspections, surveys and class records made by Norwegian Veritas include or cover the entire vessel, hull, engines, equipment and all gear and appurtenances? A. Yes.

"Q. Can you tell us from the records you have brought here, the time and place of the first survey or surveys and inspection or inspections for the purpose of original classing of the 'Black Gull,' formerly 'Herborg'? A. Yes.

"Q. What was the date and place of that or those inspections or surveys? A. Do you refer to the first survey after the completion of the vessel?

"Q. No, the first survey for classification purposes, whether it was one or more than one, for her original classification. A. That would refer to the building superintendant's survey.

"Q. During the course of the construction of the [513] vessel, do your records indicate that the construction was supervised or that Norwegian Veritas surveyors or representatives were present during construction and at the time of completion? A. Yes.

"Q. And were they present, the Norwegian Veritas surveyors and inspectors during that period? A. Yes.

"Q. Do your records, or the Norske Veritas records, show whether or not after those inspections or surveys for original classification, the 'Black Gull' ex-'Herborg' was thereafter inspected or surveyed by Norwegian Veritas surveyors? A. Yes.

"Q. Did you, at the request of Skips A/S Jolund, prepare from the Norske Veritas records, and from the records which are here present today, a summary statement show-

ing the dates and places of surveys and inspections of the 'Black Gull' ex-'Herborg' and of all of them? A. Yes.

"Q. I show you three typewritten sheets of paper in the form of a letter bearing the date 11th July 1955, and I will ask you to state whether or not that [514] paper is the summary statement mentioned? A. It is the same document.

"Q. Is it a true and correct summary statement of the contents of the records of Norweigan Veritas concerning the vessel in question? A. Yes."

I then offered the document in evidence, your Honor. It was marked, and I now repeat the offer here and offer it in evidence as an exhibit on behalf of the petitioner. It is partially in English, your Honor, and partially in other languages, but I think the portions that are not in other languages are clear. But in any event, we will have them, if need be, translated. It shows the date and place of each inspection and survey, and apparently those that were made outside of Norway are reported in some instances at least in the language of the country where the inspection was made and report made.

(Marked Petitioners' Exhibit L.)

"Q. In the regular course of business of Norwegian Veritas, do the inspections or surveys, either periodical or partial—for you have already mentioned, I believe, periodical and partial surveys—[515] result in recommendations or requirements by Norwegian Veritas of work to be done or performed, repair work or other work on classed vessels? A. Yes.

"Q. And do the recommendations or requirements for such work usually and ordinarily have a time scheduled or fixed within which the work should be done? A. Yes.

"Q. Do the records which you have produced here concerning the 'Black Gull' show whether or not there was any such work or requirements or recommendation for work or

requirement by Norwegian Veritas surveyors, which was not done or performed within the specified or required time limit? A. There were some recommendations, but they were granted a postponement in connection with the postponement of the periodical survey.

"Q. What were those recommendations? A. Shall I read it out in English? Two indented areas in tank top in No. 2 hold, port side, and one on starboard side near center line, and forward end of No. 2 hatch between frames Nos. 135 to 140, each 6 feet x 6 feet, to be dealt with at first opportunity and internals repaired as found necessary (29/11-50). [516] Deck plating starboard side at No. 2 hold in way of repaired side plating should be examined by Veritas and dealt with at next opportunity (8/2-51)."

They use the European system of the date first, your Honor, and month next.

(Continuing reading:)

"Permanent repairs to be carried out at owner's convenience of fo'c'sle deck, deck beams and girders, deck beam No. 10 and plating in shelter deck, bulkhead in control room under windlass, repair of front bulkhead in masthouse, and crack at aft starboard corner No. 3 hatch to be welded. (3/7-1951)."

Continuing with his answer:

"At first opportunity, shaft alley to be repaired where damaged, from frames No. 54 to 65. (2/10-1951)."

Down at the bottom of the page:

"Q. Mr. Zimmermann, would you tell us whether or not, according to the Norwegian Veritas records you have produced here, there were in existence as of July 18th, 1952, any violations of recommendations or requests of Norwegian Veritas with respect to the 'Black Gull'? A. Violations—I do not quite gather what [517] that stands for.

"Q. Well, there is a Norwegian word, presumably, which should and can be translated as a violation. I will ask the question, however, this way. Insofar as the Norwegian Veritas records show, did the vessel owner or its manager, that is Skips A/S Jolund or Sigurd Herlofsen & Co. A/S violate any rule, regulation or recommendation made by Norwegian Veritas with respect to the 'Black Gull' by not performing within the specified time, that is, within the time allowed by Norwegian Veritas, any work recommended or required. A. No."

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Mr. Zisgen: Just one question, which was the only one on cross-examination:

"Q. Mr. Zimmermann, in surveying and classifying vessels Norwegian Veritas does not purport to deal with the stowage of cargo, does it? A. No."

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Professor Sjur Braekhus, page 51:

"Q. Professor Braekhus, where do you reside? A. I reside in Baerum, near Oslo.

"Q. What is your occupation? [518] A. I am Professor of Law at the University, Oslo.

"Q. Is that position as Professor of Law in any way connected with the Norwegian Government or Civil Service? A. Yes. Oslo University is a State University and the professors are civil servants.

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years.

"Q. What, please, has been your education and and background, particularly with respect to legal matters? A. I studied for five years at the Faculty of Law, University

of Oslo, passed the ordinary State Examination, and then I acted as Assistant Judge in a legal court for a year. After that, I gave lectures on Maritime Law at the University. After the War I was made Research Fellow of the University in 1945 and took my Doctor's degree in 1947. I should perhaps add that the degree of Doctor of Law is not, as on the Continent, an ordinary part of the education. In Norway for the moment there are fifteen Doctors of Law, all told. Then I was made Lecturer of Law in 1947, and Professor in 1948.

[519] "Q. Apart from the degrees which you have already mentioned, have you any diploma or degree of any other type or kind? A. No. I have acted as a Judge of the Court of Appeals of Oslo on several occasions in one and a half years.

"Q. In your present occupation, and since and during the time that you have been Instructor and Professor at the University, will you describe for us, please, the nature of the work that you have done, what your duties have been? A. My duties as a professor is in the first place to give lectures and take part in the examinations of the students and then to do legal research work and besides my official duties I have done quite a lot of legal work of a private nature. I have been giving opinions for lawyers, and have been acting as an Arbitration Judge, especially in maritime matters.

"Q. When you say you have done legal work of a private nature, will you explain that a little more fully for us? A. I have been asked by members of the Oslo Bar to give opinion on legal questions—opinion which they have used in litigation in Norwegian [520] Courts and elsewhere.

"Q. Do I understand you to say you have appeared before the Norwegian Courts to testify or give opinions on legal matters? A. I have not appeared personally before the Courts, but the opinions which I have written have been produced before the Courts.

Deposition of Professor Sjur Braekhus

"Q. Have you, throughout your legal career, specialized in any particular branch or branches of law? A. Yes, I have specialized in two branches, first Maritime Law, and then the Law of Bankruptcy.

"Q. In addition to the teaching of private law, or other work you have mentioned, do you do any other work, especially or particularly in connection with any publication or publications? A. Yes. I am editor of a journal of maritime law called 'Arkiv for Sjorett' published by the Norwegian Maritime Law Association, which is a branch of the Comite Maritime Internationale.

"Q. And for how long a period of time have you been such an editor? A. The publication started in 1951 and I have been the editor from its beginning.

"Q. Have you written, or are you the author of any books or treatises? A. Yes, I have written a book on Law of Brokers. That was my Doctor thesis in 1947, and then I have written some smaller books on Maritime Law matters. Are you interested in the titles?

"Q. I would like to have them. A. I give the titles in English, but they were written in Norwegian:

"Ice Hindrances in Voyage Chartering, "Vicarious Liability of Ship Owners, then a number of small articles in law periodicals, mostly about limitations of liability, and shipowners' legal limitation.

"Q. Are you a member of any legal association, sir, or societies apart from Comite Internationale that you mentioned? A. Yes, I am in fact vice-president of the Norwegian Maritime Law Society, which is a branch of the Comite Maritime, and I have been representing Norway on the different international meetings of the Comite Maritime, and the International Maritime and Diplomatic Law Conference in Brussels in 1952.

"Q. Have you, Professor, made any research or investigation at the request of Mr. Alexander Rein, [522] of Oslo, or of myself, into the question as to whether or not there

is now, and whether or not there was in June/July 1952, any Norwegian law, statute or other law, or any rule or regulation or requirements of any Norwegian Government authority or Government Department which involved or concerned the loading on board vessels or the stowage on board vessels or the transportation on board vessels of napthalene? A. Yes, I have.

[523] "Q. Will you tell us whether or not, now or at the times stated in June/July 1952, or prior to June/July 1952, there was any such law, rule, regulation or requirement? A. Yes, I can state positively that there is not now, and there was not in July 1952, or prior thereto, any such law or decision.

"Q. I will ask you whether you made any similar research or investigation as to whether there was any such law, rule or regulation at the times in question which mentioned or referred to a chemical product known or called vinyl cyanide, also known or called acrylonitrile. A. Yes, I made the same sort or research.

"Q. Was there at the times stated any such law, rule or regulation which mentioned or referred to that chemical product? A. There were not any special rules concerning that product, but as vinyl cyanide is an inflammable substance, the general rules concerning inflammable substances will apply."

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[524] "A. Section 19."

The witness here is referring, as shown by the preceding matter, to the Norwegian Statute of 1903, the 9th of June. The witness answers and reads Section 19—on page 55, a little below the middle of the page:

"A. Section 19. Highly inflammable substances may be carried as deck cargo when contained in vats or cans as mentioned in Section 15. They must be placed at a safe distance from any companionway, or other opening in the deck, cabins or engine-room, and must be properly stowed, and securely lashed.

Deposition of Professor Sjur Brackhus

"Smoking is prohibited in the neighborhood of the places where such substances are stowed. When loading or unloading such substances care must be taken that no danger can be caused by fire or sparks from engine, funnel, lights, etc.

"During conveyance in Norway, drums, barrels, cans, and boxes, must be painted on the outside in a glaring red colour, and in a conspicuous place, [525] be marked 'Inflammable' painted in white letters at least 5 cm. in length.

"It is advisable to furnish the openings of all receptacles with a safety net provided with a fusible plug, or the like.

"First Section 2, then Section 19, and then Section 15 of the regulations. In Section 19 there is a reference to Section 15. Section 15 describes"——

That has all been read from there on.

* * *

"Q. Have you now, Professor, covered all of the Rules, Regulations or Laws which either could or might pertain to the matters concerning which I have enquired of you? A. Yes.

"Q. Can you tell us, Professor, whether or not under Norwegian Law, Rules or Regulations of any Government Department or subdivision, there is any requirement or specification or definition concerning a cargo or a passenger vessel insofar as the number of passengers permitted to be carried is concerned? Is there any such law? A. Yes, there is a definition of a passenger [526] vessel in the Statute which I mentioned.

"Q. Will you first identify the Statute, and then give us the definition? A. The Statute is an Act governing the public supervision of the seaworthiness of vessels of June 1903, and there is Section 94, the first three paragraphs. I have the Norwegian text here, and I will prepare the translation.

"Q. Will you just give us the translation as your answer? A. Section 94: Norwegian Steamship (i.e. all

vessels propelled by engine power) which carry passengers, shall, in trades determined by the King or anyone authorized by him, be subject to survey and inspection in accordance with the regulations established in this chapter.

"Steamvessels carrying a smaller number of passengers than one adult per 25 gross register tons, shall be exempted. This exemption does not apply, however, if a steamer of any size carries more than 12 passengers.

"Q. Will you tell us whether or not there was in force and effect on July 18th, 1952, and prior thereto, any Norwegian law which provided for [527] payment of compensation or damages to officers or members of the crew of Norwegian flag vessels for personal injuries sustained by them, or to their next of kin or relatives in the event of their death? A. Yes, there is and there was an Act of 24th June 1931 respecting accident insurance for seamen.

"Q. And that Act was in force and remained in force down to and including July 1952? A. Yes.

"Q. And may I ask, is it still in force to the present time? A. It is still in force.

"Q. When you say 'Act' and use the word 'Act,' will you tell me precisely what you mean by 'Act'? A. It is an Act passed by the Norwegian Parliament.

"Q. Will you tell us whether or not the compensation payment or damages provided for under such law were exclusive, that is to say, were the officers and crew or their next of kin or relatives, in the event that they were killed, limited to the payments of compensation or damages provided in that law? A. I think I could answer that question by reference to Section 28 of that Act, which I have here in translation.

[528] "Section 28: (1) Accidents covered by this Act shall not entail any liability on the shipowner, the master or any other person in command on board to pay any compensation personally or from the property of the vessel (vessel and cargo), unless it is proved by a criminal convic-

tion that the person in question has caused the injury purposely or through gross negligence.

"The right to compensation as herein specified may be enforced even without the settlement of the case by a criminal conviction if non-conviction is due to the death of the offender, his absence or some other reason dependent upon him.

"The above provisions shall not affect the liability of the shipowner under the Seamen's Act to pay wages, board and lodging and funeral expenses in the event of an accident to a member of the crew.

"(2) The owner, or the person in command of the vessel, shall not be liable for any compensation payable by a subordinate in respect of an accident covered by this Act.

"(3) The liability of a third party, not covered by the Seamen's insurance scheme for accidents embraced by this Act, shall not be affected by its [529] provisions (but see subsection 4).

"(4) Even if the shipowner, or another person, is liable for an accident covered by this Act, the injured person or his surviving dependents shall in all cases receive from the National Insurance Institution the compensation prescribed in Sections 6-11.

"The compensation which the injured person or his surviving dependents may claim from a third party in pursuance of the rules laid down above in this section shall be stipulated, in conformity with the general provisions of the Act, in the form of a lump sum. The claim of the person entitled to compensation shall be transferred to the National Insurance Institution and the insurance fund concerned so long as the injury entails expense and liability upon them (cf. section 73 of the Health Insurance Act). This shall not apply to a claim for compensation for loss of property. If the full amount of compensation cannot be obtained, the amount due to the person injured or his surviving dependents shall be paid to them before the

claims of the National Insurance Institution and the insurance funds are met.

[530] "Q. Professor, could a Norwegian national or citizen, under the Act of Parliament to which you refer, lawfully or properly bring a suit or make a claim anywhere, not only in Norway, but elsewhere, and particularly in the United States, against a Norwegian flag vessel on which he was serving, or against the owner or operator of that vessel, to recover damages for personal injuries sustained or alleged to have been sustained on board or in the service of the vessel? A. A Norwegian seaman could, of course, bring a suit for a Norwegian court, but the owner would be exonerated, with one exception, that it is proved by criminal conviction that he has caused the injury wilfully or through gross negligence.

"Q. Only in the event of wilful injury by the owner or the gross negligence of the owner? A. Yes. Perhaps I should add that a Norwegian seaman should not bring a suit before a foreign court. That would be against the Seaman's Act.

"Q. With respect to the next of kin or relatives of a deceased seaman, what is the Norwegian law in that respect?"

And at Mr. Zisgen's suggestion it was added [531] "Does counsel mean relatives of Norwegian seamen?"

"Q. That is right—relatives and next of kin of Norwegian seamen? A. The relatives of a deceased seaman would claim no compensation unless the owner has been guilty of gross negligence, or has caused the damage wilfully. The same rules as for a claim made by the seaman personally."

* * *

Mr. Stonebridge asked:

"Q. * * * With respect to questions and/or answers concerning the Compensation Act of Norway, does it or does it not apply only to Norwegian citizens? A. It applies only to Norwegian citizens. There is Section 2, subsection

Deposition of Professor Sjur Braekhus

1: 'Aliens shall not be liable to insurance, nevertheless the Crown may conclude reciprocal agreements with other countries respecting compensation to seamen and their dependents.'

"Q. As between Norway and Belgium, has the Crown concluded any such agreement? A. No, it has not."

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[532] Mr. Zisgen: Thi is part of my cross-examination, your Honor,

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"Q. Dr. Braekhus, I understand then that no compensation under the Acts you have mentioned is payable to the surviving relatives of a Belgian seaman whose death occurs on a Norwegian ship? A. That is correct, with one exception. In subsection 2 of the Act, there is special rules covering hospital treatment and funeral expenses.

"Q. With that exception my statement was correct? And am I correct, therefore, in assuming that the dependent relatives of a deceased Belgian seaman on a Norwegian vessel are not prohibited from suing, either in Norway or abroad? A. They are not prohibited from suing in Norway, and I should think you are correct that they are not prohibited from suing abroad.

"Q. That last would depend somewhat on the law of the forum, would it not? A. Of course."

I think, your Honor, I summarized the only other part of Dr. Braekhus' cross-examination that I wanted to, but for safety's sake I will simply say that he testified that Norway was a party to the [533] International Convention relating to bills of lading, known as The Hague Rules, and a party to the International Convention for the Safety of Life at Sea 1929, and sometime after July 1952 became a party to the International Convention for the Safety of Life at Sea 1948.

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[534] By Mr. Zisgen.

"Q. Norway is a party to the International Convention relating to rules for Bills of Lading, known as the Hague rules, is it not? A. Yes.

"Q. And it is also a party to the International Convention for the safety of life at sea, signed in London in 1929? A. Yes.

"Q. And that was true as to both Conventions in June and July 1952? A. Yes.

"Q. It is also now a party to the International Convention for the safety of life at sea signed at London in 1948, is it not? A. Yes.

"Q. But that Convention did not become effective [535] as to Norway until sometime subsequent to July 1952? A. That is right."

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"Q. The definitions which you gave us a while ago relating to highly inflammable substances—is there any definition in the regulations or statutes of Norway of 'inflammable' as distinct from 'highly inflammable'? A. I do not think so. I would not answer for certain. I have not made any special research on that point.

"Q. Even if there is no definition in the Norwegian statutes or regulations of 'inflammable' as distinct from 'highly inflammable,' do the regulations contain any particular provisions as to the loading or stowage of inflammable substances, again as distinct from highly inflammable? A. Not in the capacity of being inflammable.

"Q. Then do I understand, Doctor, that excepting for goods defined in the regulations as highly [536] inflammable, the Norwegian law contains no stipulations as to the loading and stowage of ordinary inflammable goods? A. No general rules based on the capacity of being inflammable, but of course there are special rules concerning different sorts of cargo which are inflammable, but there is no

general rules concerning inflammable as distinct from highly flammable.

"Q. Can you tell us some of the literature, as you call it, to which the Norwegian Courts have been accustomed to refer to determine what is or is not proper stowage for goods not mentioned by name in the regulations? A. Well, I am afraid I cannot give you the titles. I have seen several of these books, but do not use them daily myself.

"Q. You do not know? A. Well, I have used several of the books myself, but I do not remember the titles. I remember one Norwegian one.

"Q. What was the name of that? A. Schramm, I think. I am not quite certain, but I can check it up if you like."

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[537] Deposition of a lawyer named Joseph Collard:

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"Q. Mr. Collard, do you reside here in Antwerp? A. I reside in Antwerp.

"Q. What is your occupation? A. I am a lawyer in Antwerp as from 1929.

"Q. Will you tell us what you legal education has been and what college or university degree or degrees you hold, if any? A. I have done all my legal study without following the course of the University. I have passed all my examinations at the Central Jury who delivered me my certificate of Doctor-in-Law.

"Q. When did you receive your certificate as Doctor of Law? A. I have received my certificate of Doctor-in-Law in August 1929.

"Q. Did you at any time attempt or take any course or courses at any navigation school and if so what school and when? A. I have followed the course of the navigation school of the State in Antwerp in 1922 or 1923, if I [538] remember well.

Deposition of Joseph Collard

"Q. Did you receive any diploma or certificate from that school or course? A. After having passed the examination I received the certificate of cadet deck officer in the ocean trade.

"Q. When did you receive that certificate? A. At the end of the 1922 or 1923 term.

"Q. What is the date of your birth? A. The 3rd June 1904.

"Q. Are you a member of the Bar and admitted to practice in court or courts in Belgium and, if so, what court or courts? A. I am a member of the Bar at Antwerp as of October 1929. In this quality I may plead before all the Tribunals of Belgium and before the three courts of Appeal but not before the Court of Cassation.

"Q. Have you since you have been admitted to these courts been in active practice as an attorney or barrister before them? A. I have practiced without interruption and in a very active way as from October 1929.

"Q. Have you during your practice had any specialty of particular kind or type of law which you [539] have dealt with? A. I have specialized in maritime cases and also interior waterways as well as in commercial cases as from my entry in October 1929.

"Q. Have you engaged in any teaching of law and if so what law have you taught and when and where? A. I am Professor at the School of Navigation of the State in Antwerp where I give courses in some kinds of law especially maritime law. I think as from 1943.

"I am also Professor at the Higher Commercial Institute St. Ignace where I give a course in Maritime Law and also Maritime Insurance since 1943/1944.

"Q. Are you a member of any association or society or an officer or director of any association or society which concerns maritime or marine matters, and if so what association or society and in what way are you connected with them? A. I am naturally member of the Belgian Associa-

tion of Maritime Law. I am also member of the Committee which has been appointed with elaborating the maritime law for the Belgian Congo. It is an official committee, instituted by the Ministry of the Overseas Territories.

"I am President of the paritary commission [540] of the Merchant Marine in Belgium.

"Mr. Zisgen: President of what?

A. Paritary Commission that is 'Commission Paritarie.'

"Mr. Zisgen: What does that mean?

A. Let me explain, sir. We have here in Belgium a delegation of Shipowners and ship's crews. The Chairman of this commission I am. This commission is in charge of discussing all matters of maritime labor.

I am president of the mixed committee of commercial terms which has been instituted by the Federal Maritime Commission of Antwerp and by the Chamber of Commerce in Antwerp.

"Q. Will you, Mr. Collard, name for us a few clients for whom you handle or have handled maritime legal matters? A. My main clients are Protecting Clubs or Underwriters.

"Q. When you say Protecting Clubs you mean what is generally referred to as Protection and Indemnity Clubs? A. Yes.

"Q. And when you mention insurance companies are [541] you referring to marine insurance companies? A. Yes, mainly.

"Q. Now, did you, at my suggestion or the suggestion of my client, who is represented by Oslo lawyer Mr. Rein, make any research or investigation into the question as to whether or not there is now and whether or not there was on July 18th, 1952, and prior thereto any Belgian law, rule, regulation or requirement of any Belgian Government authority or department which mentioned or concerned the

stowage or transportation of naphthalene? A. I have been asked to make that research and I have done it.

"Q. Did your investigation and research include any Court decision or decisions referring to or mentioning naphthalene? A. Yes, they have asked me to look for any decision on the subject and I have done it.

"Q. Now, are there now or has there in the past been and particularly was there in July 1952 any such law, rule, regulation, statute or court decision? A. There is not at the moment and there was not in July 1952 any law, statute, regulation regarding the stowage of naphthalene. I have not [542] found any decision or judgment which deals with the stowage of naphthalene.

"Q. Mr. Collard, have you also made enquiry or research at my suggestion recently with respect to the question as to whether or not there are any court decisions involving the interpretation or application of Article 66 of book 2 of the Belgian Commercial Code? A. Yes, they asked me and I have done that investigation.

"Q. Can and will you refer, please, by name, identification, citation of the book, where it is to be found, any court or court's decision with respect to Article 66 of book 2? A. Yes, I started by rereading Article 66 of the Commercial Code and then I have read the comment which Messrs. Smeesters and Winkelmolen have given on Article 66. Smeesters and Winkelmolen are the commentators best known on maritime law in Belgium.

"Q. Can you refer to any specific case or court decision involving that matter or that question? A. Smeesters and Winkelmolen cite several decisions in their work, and I have reread these judgments and I have also searched whether there [543] were not any others.

"Q. I would like to know, not necessarily all of them, but at least one or two decisions, especially some decisions of the Appeal Court at Brussels involving that question. A. There is especially a decision of the Court of Appeal of Brussels in 1923, if I am not mistaken.

Deposition of Joseph Collard

"Q. Can and will you cite that decision by name, volume and page? A. I cannot quote it by heart but it must have appeared in the Jurisprudence of Antwerp and I see that it has appeared in the Jurisprudence of the Board of Antwerp of 1923, page 443 and following.

"Q. And the name of the case? A. Case Dekkers v. Landaur and Co. and Ullivari. I should like to complete my answer.

"Q. Yes, sure. A. The research that I have done on Article 66 has confirmed the Belgian Tribunals and Courts admit that the authority to load cargo on decks sufficiently results from the acceptance without any reservation by the shippers of bills of lading showing that the goods have been loaded on deck.

"Q. Does the case to which you have referred [544] in 1923 so decide or so hold? A. The rest of the Court of Appeal of Brussels of 1923 decides in that sense.

"Q. Is that 1923 decision an appeal from a lower court, and, if so, will you give us the citation and volume of that lower court decision? A. This arrest judgment by the Antwerp Tribunal of Commerce of 1922.

"Q. Will you identfy for us the volume and page of the 1922 decision you mention? A. This decision has been given on the 4th March 1922 and appears in the Jurisprudence of 1922 page 180 and following.

"Q. In your opinion what is the law of Belgium on a question as to whether or not the provisions of Article 66, Book 2, of the Commercial Code with respect to written consent of the shipper are applicable if a bill of lading is issued to the shipper which bill of lading specifies or provides for on deck stowage? A. When keeping ourselves to the literal wording of Article 66 one might believe that a written consent from the shipper is always required but the comments by Smeesters and Winkelmolen and all the judicial [545] decisions to which I have referred show that one cannot limit oneself to this literal interpretation

and that the acceptance of a bill of lading mentioned the loading on deck is a written consent provided by Article 66."

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[546] • • • Mr. Zisgen's cross-examination.

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Mr. Zisgen: I think I can perhaps summarize this—I do not think there is too much argument about it.

Maitre Collard agreed that Belgium is a party to The Hague Rules Convention; that it has a legal statute similar in terms to The Hague Rules, which is no Article 91 of its Maritime Code; that both of those, that is, the Convention and the Statute impose on the carrier a duty to load and stow the goods appropriately, and by "appropriately" he means properly and carefully and reasonably; that there is no provision in either the Convention or the Statute which excepts napthalene from that obligation.

He further agreed that the parties might lawfully, under the law of Belgium, contract to have The Hague Rules applied to their contract of [546] carriage even in instances where The Hague Rules did not apply of their own force.

He agreed that when a carrier accepted good for transportation on deck he was still obligated to carefully load and stow them but he continued that he was entitled to exempt himself from that obligation by contract.

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Both the rules annexed to The Hague Rules Convention and Article 91 of the Belgian Code of Maritime Law"—[548] if you will start there.

Mr. Zisgen: Both of those "imposed upon an ocean carrier the obligation to properly load and stow the goods offered to him for transportation, do they not?

"A. Indeed, the Belgian law as well as The Hague Rules impose on the carrier to load and stow the goods appropriately.

"Q. And by appropriately you mean properly and carefully, do you not? A. It is a question of appreciation of the facts that in every case the carrier must load and stow carefully and reasonably the goods which have been entrusted to him.

"Q. There is no provision either in The Hague Rules or in Article 91 which excepts naphthalene from that obligation, is there? A. Neither the Hague Rules nor the Belgian Article 91 in particular deal with the carriage of naphthalene or any other goods, but the Belgian law provides that its provisions do not apply to the carriage of goods on deck nor to livestock.

"Q. By that you mean, Maitre Collard, that neither the Rules nor Article 91 specifically mention naphthalene, do you not? [549] A. Yes.

"Q. It is true, is it not, that their general requirements of proper loading and stowage apply as much to naphthalene as to any other goods? A. The carrier must bestow the care on the goods as well on naphthalene as on other goods for loading and stowage.

"Q. Now, do you not also agree that under the laws of Belgium the parties to the contract of carriage may agree that The Hague Rules or any part of The Hague Rules may govern the transportation of their gopds even in instances where The Hague Rules do not apply of their own force? A. Under the Belgian law parties may agree that The Hague Rules, as well as the Article 91, will apply even there where they do not apply as statuted.

"Q. Do you not also agree that under the Belgian law in force in July 1952 an ocean carrier has certain obligations with respect to cargo which is carried on deck with the consent of the shipper? A. When an ocean carrier accepts to transport goods on deck he must naturally care-

fully load and stow the goods but he may exempt himself from liability as per eventual clauses in the bill of lading.

[550] "Q. Is it your understanding of the Belgian law that by a provision in the bill of lading an ocean carrier in July 1952 could completely exempt himself from all responsibility for damage to the goods even if the damage was caused by negligence on the carrier's part? A. To answer this question I must give my opinion on the exemption clauses according to Belgian law.

"Q. That is what I asked. A. The Belgian jurisprudence and doctrine generally admit the exemption clauses of a contract but they often refuse to admit these exemption clauses when the fault that has been made is gross or inexcusable.

"In that case we discuss the question whether one may exempt himself from the gross fault of a subordinate. One can never exempt himself from his own gross and inexcusable fault and one discusses the matter as to whether one may exempt oneself from the gross and inexcusable fault of one's subordinate.

"Q. When you say one discusses that matter you mean that is a point at issue in the Court? A. There are decisions to the opposite of that point.

"Q. In other words, the law of Belgium is not [551] yet completely settled whether or not one may excuse himself in the situation have put for fault of subordinates other than personal faults, is that correct? A. I would prefer to say that the Belgian Jurisprudence and Doctrine are not yet settled, because the law does not treat this matter specifically.

"Q. When you say the law does not treat this matter specifically you mean the statute law, do you not? A. A law made up by a tax which has been agreed upon by legislation or by the Code Napoleon.

"Q. You understood, did you not, Maitre Collard, that when I said the law is not settled I meant not merely a

statute but the whole body of law from whatever source derived? A. In French we say 'en droit Belge'. In Belgian right.

"Q. The answer to my question is yes, is it not? A. Yes.

"Q. Then, as I understand you, Maitre Collard, there may be instances in which a carrier who stows goods on deck with the consent of the shipper may be liable for damage to them and those instances are instances in which he is guilty of gross negligence? [552] A. In principle, the carrier is responsible for the goods loaded on deck. He may exempt himself from liability when he may occasionally be relieved from liability. He can so be held responsible if he has committed a gross personal fault or negligence or even a gross fault or negligence committed by his subordinate if the Tribunal agrees that he is to be held responsible for this fault of his subordinate."

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[553] Continuing the cross-examination by Mr. Zisgen:

"Q. Now you told us that you did not know of any statutes, rules or regulations, dealing with the loading or stowing of naphthalene by name, did you not? A. Yes, I told you that there is none.

"Q. Then in determining whether or not there is gross negligence in the carriage on deck with the consent of the shipper of naphthalene or other goods not mentioned by name in any statute or regulation, from what source do the Belgian courts derive their standards for judging whether due care has been exercised? A. It will in each case be a separate case adjudicated by the Court and the Court will rely itself on the surveyors. The Court will rely for each case on its own merits on the information it has received and generally on the basis of the surveyors' reports.

"Q. Who are these surveyors whom you mentioned? A. In Antwerp these surveyors are practical men always members of the Nautical Committee of the Court of Commerce of Antwerp.

Deposition of Joseph Collard

"Q. These surveyors of the Nautical Tribunal of Antwerp are former Masters of ships, are they not? A. Yes."

[554] Mr. Zisgen: Continuing right from there:

"Q. In instances in which the question to be decided depends upon technical knowledge in fields other than that of navigation of ships to what sources do the Belgian courts turn for assistances? A. When cases do not concern navigation or stowage, the courts have recourse to other experienced specialized men in one or the other field.

"Q. In the field of chemistry for instances to whom do they turn? A. For these cases the court would generally appoint a chemist or a professor of merchantable goods.

"Q. Do you know the names of any chemists that the courts of Antwerp have consulted in such instances? A. From memory I know that the Court already appointed Mr. Desmurs and Mr. Angelot.

"Q. Have you ever known them to appoint or consult Dr. Jules Aeby? A. Mr. Aeby is very well known as author of the book, 'Dangerous Goods'. Personally I have never had him in cases which I have treated as being appointed by the Tribunal.

"Q. Have you known of any instances where the Tribunal of Antwerp has appointed him? [555] A. I do not know of any cases in which Mr. Aeby would have been appointed but I know that before the Court often use has been made of his book in the course of cases.

"Q. By that you mean use has been made of his book by the attorneys? A. Yes.

"Q. When you say his book, you mean, do you not, this book"—

That was then identified, your Honor, as the third edition, the 1938 edition, which has already been offered in evidence here.

That is all I think I wish to read.

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Deposition of Jacques van Doosselaere

Deposition of another Belgian attorney, whose name is Jacques van Doosselaere:

"Q. Sir, would you state your name for the record. A. Van Doosselaere, Christian name Jacques.

"Q. Are you a resident of the City of Antwerp? A. Yes.

"Q. Are you a member of the legal profession in [556] this city? A. I am.

"Q. Would you please tell us a little about your preliminary education? A. I went to school at the Lycee d'Anvers. Then I went to the University of Brussels. My diploma was delivered in October 1932 and I became avocat in Antwerp the 20th of October 1932.

"Q. You are then an attorney licensed to practice in the port of Antwerp? A. Yes.

"Q. Before what courts in Belgium are you entitled to practice? A. I am entitled to practice before all the Belgian courts except the Supreme Court which we call 'Cour de Cassation'.

"Q. Since your admission to practice law in 1932 have you specialized in any particular branch of the law? A. Yes, I have.

"Q. In what did you specialize? A. I have specialized in the maritime branch.

"Q. Would you name any legal conferences or societies of which you are a member and if you hold an office or officership in any of them so specify? [557] A. Yes, I am a member of the International Law Association, Belgian branch, and I have followed a few meetings of International Law Association, I went years ago to Cambridge for instance. I am also member of other associations like to give you an example the 'Association Capitan,' that is not maritime.

"Q. Are there any other maritime legal associations of which you are a member? A. Yes, I am a member of Association Belge de Droit Maritime, and I have to go in September to Madrid to the meeting of the Comite International to report for the Belgian branch.

Deposition of Jacques van Doosselaere

"Q. Are you in any way connected with any legal publications or reviews? A. I have been doing very long years the secretary of the Jurisprudence du Port d'Anvers and am now one of the directors of the Jurisprudence du Port d'Anvers.

"Q. Exactly what does that organization do? A. We are publishing in that Review the most interesting decisions of the Court of Appeal or ordinary courts relative to maritime cases.

"Q. Are you by any chance a professor, a judge or anything of that nature? A. I am what you call in French 'Juge Suppleant [558] au Tribunal de Premier Instance civil et correctionnel' at Antwerp.

"Q. Would you explain please in a few words just what your duties and functions are in respect to your answer to the last question. I can't repeat in French. A. You see in Antwerp 14 lawyers at the same time substitute judges or 'juge suppleant' at the Court in Antwerp.

"Q. Under what circumstances do you sit as a judge? A. In special circumstances when we have to replace provisional judges, I would say 'juges de carriere' who are absent on leave or are ill.

"Q. In what type of cases would you be called upon to sit as a judge? A. It would only be in civilian cases and criminal cases.

"Q. No maritime case? A. No maritime case. It could happen, not often, but it could happen because some maritime cases are tried before the civilian court when one of the parties involved in the case is the Belgian state or the town of Antwerp. It cannot be sued before the commercial court so they have to be sued before the civilian court. It could happen that in such a case I have to sit as a judge.

[559] "Q You mentioned earlier I believe that you had specialized in martime law. Could you name for us a few of your representative maritime clients. A. I should first name the Black Diamond Lines. I can also name the

shipping company Lykes Bros. or the Belgian shipping company, Belgian Fruit Lines, Hellenic Lines. I am also the lawyer of the Chargeura Reunis, a French Company.

"Q. In addition to shipping companies, do you represent any maritime insurance company? A. Yes, I act very often for the Lloyds Underwriters in London, their agents here Gellatly Hankey & Co. I act sometimes for American International Underwriters, New Hampshire Insurance.

"Q. Have you at the request of Black Diamond Lines reviewed the law, royal decrees, regulations of Belgium together with court decisions with respect to presenec or absence of any specific law, royal decree, regulations or court decisions pertaining to the stowage of crude naphthalene? A. Yes, I have.

"Q. After your review and study of the Belgian law on that subject, what conclusions did you reach? A. I must say that I do not find in the Belgian [560] laws or decrees or regulations any disposition relating to the stowing and carriage by sea of naphthalene, crude naphthalene in bags.

"Q. Has Belgium, a signatory of and adherent to the Hague Rules Convention and the Conventions for the Safety of Life at Sea 1929 and 1948, adopted any decrees, regulations under those conventions pertaining to the carriage of naphthalene? A. Yes, sir, Belgium has signed the convention relative to the Hague rules, and I'm sorry I did not hear the other you spoke about.

"Q. Convention for Safety of Life at Sea 1929 and 1948 signed at London. A. Belgium has signed also this convention and I think the Belgian law is the law of 1951. After the signing of this treaty Belgium had to establish a full statute relating to the safeguard of life at sea. Belgium has not established a statute in compliment to this Convention.

"Q. I asked you in the last questions, one with respect to you conclusions after reviewing the law in Belgium in

connection with the stowage of crude naphthalene and also in connection with the conventions to which Belgium is the signatory and adherent, do your last answers in [561] respect to those questions apply equally as of 1952 and as of today? A. Yes, sir.

"Q. Have you, sir, at my request within the last week reviewed Smeesters & Winkelmolen, Droite Maritime & Fluviaex, and read and reviewed the cases reported in Jurisprudence du port d'Anvers, volumes 1880 page 342, 1886 page 149, 1922 page 180, as well as the Belgian Code of Commerce volume 2 articles 59 and 66? A. Yes, sir.

"Q. Have you read any other cases dealing with the responsibility of the Captain or Owners of the ship with respect to responsibilities for carrying cargo on deck? A. No, sir.

"Q. In your opinion, based upon cases and texts referred to above, is it necessary for a carrier to obtain the written consent of the shipper to carriage of cargoes on deck? A. As per doctrine and jurisprudence it is not required that the shipper confirms by written statement the consent of shipping the cargo on deck. The authors and the courts say that what the law aims at serves as a way of proof. The authors and law say that when a shipper [562] has accepted a bill of lading showing the loading of cargo on deck and has not protested against these stipulations he has tacitly given his accord that he agrees with the term 'shipped on deck'

"Q. I refer, sir, specifically to the case reported in the 1923 volume Jurisprudence du port d'Anvers the opinion commencing at page 443 the title of the case being Dekkers against Societé Landauer & Co. and Ullivari and others. Have you read that case? A. Yes, sir, I have read that decision.

"Q. What specifically does that case hold or better yet if you could read for us from that opinion, one sentence or one paragraph or several paragraphs covering the question of liability of a carrier for on deck stowage and the fact of the acceptance by the shipper of a bill of lading endorsed

'shipped on deck' or equivalent? A. Yes, sir. You want me to read the French text of the decision?

"Q. Would you read it to yourself, please, silently, and point out anything with respect to that particular problem? A. I remember that the Court of Appeal, Brussels, has confirmed a judgment pronounced by the Commerce [563] Court in Antwerp on the same case one or two years before. I remember that the decision of the Tribunal of Commerce Antwerp has been published, I think, in the same review but in 1922. Here it is, a confirmation of the decision rendered by the Court, Antwerp. Now I shall read the first paragraph and after that——

"Q. If it concerns specifically the question which has been put. A. I think the first paragraph, the second paragraph and the third paragraph and also the fourth paragraph cover the matter.

"Q. What is said by the Court in those paragraphs?" A. The witness then replied, your Honor, in French, and the interpreter who was present was asked to translate the summary which Mr. van Doosselaere, the witness, had just given, and at the bottom of page 4 the translation into English is given, and we will read that:

> "The Court says in its decision that article 66 of the commercial code of the Maritime Law only applies to the consent given by the shipper on the moment of shipment or prior thereto. The Court says that this article does not prevent that the parties to a maritime contract of carriage estab- [564] lish as per the commercial ways of the common law the acceptance which the shipper or his assignee would have given of the shipment loaded on deck by the Master, and the Court adds that this acceptance may result from the fact that the shipper has received without making any reservation a bill of lading showing that certain goods have been loaded on deck.

Deposition of Jacques van Doosselaere

"Q. Are you familiar with the Commission Nautique du Tribunal de Commerce at the port of Antwerp and its functions? A. Yes, sir.

"Q. Have you recently prepared a paper on its duties, functions, etc.? A. Yes.

"Q. When and at whose request? A. At the request of the Black Diamond Lines.

"Q. Where was the paper delivered? A. I have said that I had established notes on the institution in general and added that precisely two days ago at the request of the Maritime Federation of Antwerp I have reported to the directory committee of the Federation Maritime of the actual condition of the Jurisprudence as to the value which must be given to the stowage reports [565] that are delivered by the experts of this Commission.

"Q. Would you please tell us something about the Commission Nautique aupres du Tribunal de Commerce and its functions particularly with respect to the examination of the ships before and after discharge or loading of cargoes at this port? A. One of the missions of the Commission's experts consists to examine, to watch, to survey the stowage of the vessels either during loading in Antwerp or during discharge at Antwerp. It is common use in Antwerp that the steamship companies when a vessel has to discharge in Antwerp address themselves to the President of the Commercial Court and ask of him to nominate experts that are members of this Commission and who are named the stowage experts to verify the stowage. The same custom exists for ships loading at Antwerp. Generally the President designates three experts and this designation is done through an order at the request presented by the steamship companies or their agents the President gives this order and nominates three experts. If you wish I can show you two decisions given by the Court of Commerce in Antwerp, one of which is relevant as to the watching of the ship loading at Antwerp and the other is a more general [566]

decision which indicated the value that has to be given to these surveys, but then surveys in general.

"Q. Will you please refer to the first of the two cases you mention? A. It is a decision from the Tribunal de Commerce d'Anvers 15th March 1938, which you will find in the Jurisprudence du port d'Anvers 1939 page 269. I will read you the two or three paragraphs which I was pointing out. I will first resume what is given in the first part of the decision. The master of the ss TUVA was held responsible of the damage to a load of chalk in bags, and this master to whom faulty stowage was reproached has maintained that he had addressed himself at Antwerp to nautical surveyors, members of the Commission, to check the stowage and see here what the judgment says: 'Bearing in mind that the Captain maintains that before shipping cargo in Antwerp he had taken the precaution to address himself to two nautical experts who ascertained the maintenance and the state of the various holds of the vessel,' and then comes the text of an extract of the report of the nautical surveyors. The declared: 'We went on board of the said vessel where we were and where we have examined the vessel and have found the various compartments in [567] necessary condition for taking cargo for loading.' And afterwards before the vessel sailed the same nautical surveyors who had in the meantime surveyed the stowage of the goods declared that this stowage had been done in accordance with the customs.

"Then comes extract from the surveyors' report: 'Renewing our visits on board during the loading of goods as often as it was necessary in order that we could get a good idea of the stowage of these goods we found that the said goods were stowed in the different compartments with the necessary dunnage and that all reglementary prescriptions were carefully taken care of for the carriage by sea.

"And then the last sentence: 'Bearing in mind that the defendant has consequently concluded that he has effected

with reasonable diligence as imposed by maritime law to prepare his vessel in seaworthy condition and that he cannot be held responsible of damages that are only attributable to bad weather which the vessel encountered in the course of its voyage.'

"This was only to point out that it is the custom of the port of Antwerp to check the loading of cargo and to show you the value that the Court attaches to the surveyor reports."

[568] That is all of his direct, your Honor.

Mr. Zisgen: I will state, your Honor, on cross-examination this witness seemed to me to give substantially the same testimony as Mr. Collard, whose deposition was read a few moments ago. There is only I think one question and answer that I will read in toto, and that is on page 7, and it is this:

"Q. In other words, is it not a fact that even in the case of goods carried on deck with the consent of the shipper, the carrier must not be negligent? A. Yes."

• • •

Deposition of Francois Verworst:

"Q. What is your full name? A. Verworst.

"Q. First name? A. Francois.

"Q. Captain Verworst, you reside here in Antwerp? A. Yes.

"Q. What is your occupation? A. Nautical expert with the Tribunal of Commerce in Antwerp.

"Q. For how many years have you been a nautical [569] expert with that Tribunal? A. Since October 1947.

"Q. Prior to 1947 what was your occupation and how long? A. I have been for about twenty years in the service of the Compagnie Maritime Belge as second mate, first mate and captain.

Deposition of Francois Verworst

"Q. Will you tell us briefly what the duties are of the nautical experts, what work do they do in the course of their ordinary day or week? A. We go daily aboard ships in order to verify the stowage of merchandise as well in loading as in discharging.

"Q. And at whose request, under what circumstances do they board the vessels for that purpose? A. When a ship arrives in Antwerp, the agent in the captain's name brings in a request at the Tribunal of Commerce, in order that a body of three experts designated by the Court of Commerce goes on board to see whether the stowage and the care taken by the ship's personnel is in agreement with the general carriage rules and applies for the particular kind of merchandise. We go so many times a day on board as we judge necessary. We do exactly the same thing for the loading of the [570] goods.

"Q. And also for discharging? A. Yes, for discharging and for loading.

"Q. In your years of experience with the Tribunal as a nautical expert can you tell us approximately how the number of inspections for loading compare with the number of inspections for discharge? A. Roughly speaking they are equal.

"Q. In the course of your inspections do you or do you not issue a certificate or statements? A. Yes, sir, we always give a certificate and there is a small difference. For the loading there are two kinds: one is signed by three nautical experts, surveyors, in case the compliance is done to the Tribunal's request and the other one is signed by two surveyors and is not deposited on the Tribunal.

"Q. In other words if I understand you correctly if the Tribunal of Commerce gets the report, there are three surveyors and if it is a private company or party two? A. No, there is not a private company.

"Q. Applicant, I mean. A. If the applicant goes not through the Tribunal?

Deposition of Francois Verworst

"Q. Yes. [571] A. See, there are two different cases: if the ship's owner or the agent, in the name of the Master, makes the request to the Tribunal, then the President of the Tribunal designates a body of three nautical experts, but if the agent does not do the request in the Master's name but the request comes immediately to the nautical experts' office the certificate that we then deliver is only signed by two experts and is not deposited with the Tribunal of Commerce.

"Q. In the course of your work over the years as an expert, can you tell us whether there has been a usual customary practice by Black Diamond Lines S. A., with respect to requesting or applying for inspections of vessels both for stowage and discharging? A. We do all the vessels of Black Diamond Line as well in discharging as in loading, but for the loading the reports are not deposited at the Tribunal of Commerce and that is why for Black Diamond all the reports are only signed by two experts.

"Q. So far and to the best of your knowledge does or does not Black Diamond Lines S. A. request an inspection of all the vessels or only some of them? A. For every vessel as well in loading as in discharging Black Diamond Lines bring in a request.

[572] "Q. When you say 'bring in' you mean makes a request. A. Yes, request, it is a form.

"Q. Do you keep and make in the course of your duties any record of any kind of the vessels which you inspect, keeping it in your own office? A. Whatever we note during loading or discharge we inscribe in books. For the loading we hold a separate book and for the discharge also a separate book.

"Q. Does that mean a separate book, one for the loading, another one for the discharge? A. Yes.

"Q. Do you recall whether or not you personally made an inspection of a loading on the Black Gull in July 1952? A. Yes.

"Q. Could you without the aid of your book state exactly the day or dates on which you reported? A. No.

"Q. Have you brought with you the book in which you made the entries concerning the Black Gull inspection in July 1952? A. Yes.

"Q. Will you produce that book. [573] A. I produce the book.

"Q. Now, refreshing your memory if necessary from that book, can you tell us when, by date, and where you boarded the Black Gull for that inspection? A. I have been on personally the 4th, the 5th and the 7th of July and the ship was moored at No. 142.

"Q. That is pier 142 at Antwerp? A. Yes.

"Q. Did anybody else from your organization of experts also board the vessel? A. Yes, Captain Casteleyn.

"Q. Were you both together? A. No.

"Q. You went on separate occasions? A. Yes.

"Q. Do you know where Captain Casteleyn now is? A. He is now on holidays.

"Q. Away from Antwerp? A. Yes.

"Q. Did you sign the book you mentioned? A. No, I have not signed the book but I have signed the report which we made.

"Q. Now what report did you sign? A. It is a report which is prepared beforehand [574] and if we have something special to note in it, we note it in this report.

"Q. Do you issue certificates or reports at a time when you are not satisfied with the stowage or the conditions you observe? A. We do not deliver the certificate. I will explain the cases which have presented themselves if they can interest you.

"Q. Did you issue a certificate for the Black Gull in connection with that inspection which you made? A. Yes, and this report has been signed on the 8th of July.

"Q. What is your customary practice in respect to whether or not you in your office prepare one copy or more than one copy and if more than one copy of the report, how

many? A. We remit the copies of the ships which we verify and of which the request has been handed in through the Tribunal to the Tribunal where they are deposited and registered. The others for the loading, if the request has not passed through the Tribunal we remit them directly to the agent.

"Q. How many copies? A. I think two I am not sure.

"Q. That is the original and a duplicate? [575] A. Yes.

"Q. I will show you a document and I'll ask you if you can identify it? A. This is the duplicate of what I have drawn up and the original I have signed.

"Q. What became of the original, insofar as you know? A. One of our clerks has most probably remitted this to Black Diamond Line.

"Q. Is this paper which I have just shown you and which you have looked at a true and complete copy of the original? A. Yes it is absolutely exactly the same."

• • •

(Marked Petitioner's Exhibit M.)

[576] Then from the witness himself, your Honor, he volunteered this:

"Mr. Verworst: I ask you whether it would interest you to see a copy of a request that passes through the Tribunal.

"Mr. Zisgen: Yes."

And the witness presented a document dated Antwerp, 26th July, 1955.

And then I asked the witness: "Will the witness tell us what it says, or the interpreter."

And the interpreter than read into the record, in English, of course, a translation of the document which was produced at the request for inspection, and it reads:

"To the President of the Court of Commerce holding session in Antwerp.

Deposition of Francois Verworst

"Mr. President,

"Captain"—blank, because it was just a blank form—"commanding the Norwegian vessel named BLACK FALCON arrived here from New York requests your Grace to appoint experts in order to certify the closing of the hatches the breaking of masts and pumps also the stowage of the cargo of the aforementioned vessel and your [577] order to be declared executable before registration.

"It is then dated Antwerp July 26th, 1955.

"For and on behalf of the Captain

"Black Diamond Lines S.A."

Then the interpreter continues:

"And then it reads:

"We President of the Court of Commerce holding session in Antwerp in view of the above request name as experts the following gentlemen:"
and those three names follows:

"Dasseville Verworst Aspeslagh former masters with deep sea trade, all residing in Antwerp, to do as formulated in the request.

"Antwerp, July 26th 1955.

"Registered in Antwerp July 27th, tome 417, page 26, linea 18/7

"Received 140 francs—the collector of dues."

Continuing with the examination:

"Q. That document is returned to Black Diamond? A. This paper is remitted as it is to Black Diamond Lines.

"Q. The forms of request have been similar in type and contents to this? [578] A. Yes.

"Q. I understood you Captain, correct me if I am wrong, to state that you had issued the certificate, you and Captain Casteleyn for the July 1952 inspection of the

Black Gull on the 8th of July? A. Yes, that is what is marked in our book; the report has been remitted on July 8th, 1952.

"Q. Will you look at this document"—and I will substitute the exhibit number presently in this case—"Will you look at this document"—Petitioners Exhibit M—"and tell me about the date on that? A. It says the 9th of July and in my book I have the 8th. But it may be that on the 8th the ship left and we made the report on the 8th and we gave it out the next day. So this is the date we give it the Black Diamond.

"Q. So the date on"—Petitioners' Exhibit M—"is the date on which you got the paper off and signed and delivered it? A. No, the 9th is the date we delivered it, the 8th is the date when I signed, because, you see, we sign it for instance to-day and the following day we give it off for delivery.

"Q. Do you recall from your own memory what cargo [579] was on board the Black Gull? A. If I look in the book I can tell you, not from memory.

Q. Refreshing your memory from the book which you have presented, can and will you tell us what cargo was on the Black Gull at the time of your inspection? A. On the 4th of July they loaded iron in No. 1 hold lower hold and 2 lower hold.

"On the 5th they loaded in 5 lower hold bales of burlap and various cases.

"On the 7th in lower hold No. 1 on the forepart tin ingots; on the after part bales of wool. In 2 lower hold crates and plates of marble, bales of cotton waste. In No. 5 lower hold on the forepart, bales of wool and on the after deck bags of naphthalene.

"Q. Do you recall how the naphthalene was stowed which you have mentioned as having been loaded on the after deck? A. As far as I remember, because I do not see any special note against it, they put on the sides

dun age to protect the cargo and as far as I can remember, but of that I am not quite sure, it was so long ago, they put dunnage on the deck too and then the bags were put on and on top they put a [580] rope net which kept the bags together.

"Q. Except for the rope nets to hold the bags together, was there any other coverage on top or on the sides? A. No.

• • •

"Q. Are you familiar incidentally with the fee system charged by your concern? A. No, sir. As a matter of fact I think nobody in our office is concerned with this because we do not receive those fees. See here how it should really go. It is the President of the Tribunal who would have to pay us but in order to do away with all unnecessary trouble and to facilitate work our clerk [581] goes to the different agencies and he collects there the different sums which are due and that is all I know of it.

"Q. Do you know how the rates or the amounts of the fees are? A. I did not know them but I asked them today. It may be very strange to you but if it interests you. All these particulars have to be deposited with the Tribunal of Commerce and in accordance with the President of the Tribunal these rates are effective."

• • •

"Q. How many nautical experts are there in this organization of yours? A. We are eight for the moment.

"Q. And does the number vary at any time? A. Between 7 and 9, but one died a couple of weeks ago so for the moment we are 8.

"Q. Do applicants for inspections have any voice or say in selecting the particular experts who are to make an inspection which is requested? A. No. Through practice we generally know who will be named nobody outside the Tribunal and [582] ourselves know the expert which will come on board.

Deposition of Francois Verworst

"Q. Was this certificate which you say"—Petitioners' Exhibit M—"is the duplicate copy issued after you had completed your inspections of the Black Gull and after you had seen the naphthalene stowed in the manner you have testified? A. Yes, sir, we never sign a certificate before the ships leave to Port of Antwerp. Usually we go before she leaves still on board to see if everything is in order to our satisfaction and then only we issue the certificate.

"Q. Over the years that you have been acting as a nautical expert and inspecting loadings or stowage have you had occasions and if so approximately how many would you say if you can on which you have seen naphthalene, crude naphthalene in bags stowed on vessels? A. I could not tell you exactly the number but there are many ships loading naphthalene in bags in the port of Antwerp but how many I cannot tell you.

"Q. Would it be a large number over the period of a week or a month. Any approximation? A. I cannot give you because for instance for the vessels of the Black Diamond Lines sometimes they load several ships, one after the other, with [583] naphthalene on deck and then sometimes it happened several months that they leave the port of Antwerp without naphthalene and the same thing happens to other ships.

"Q. As a result of your experience and observations, will you tell us whether or not in your opinion this naphthalene loaded on the Black Gull on the occasion of July 1952 which you have mentioned was properly stowed. A. Yes, because otherwise we would not have delivered the certificate.

"Q. In your observation and experience was or was not the manner in which that naphthalene was loaded the usual customary way in which you have seen naphthalene loaded on vessels at Antwerp? A. I repeat again if the naphthalene had not been loaded in accordance with the uses and customs we would never have given the certificate."

Deposition of Francois Verworst

"Q. By what method or in what manner are the members of the nautical experts selected and appointed? A. It is through a general assembly of the Court of Commerce that the experts are installed and then we receive the letter which I show you."

And I asked, your Honor, the interpreter to [584] interpret the letter and he did so for the record, and the interpreter stated:

> "It is emitted from the Court of Commerce in Antwerp, the Cabinet of the President and bears number 1534 dated Antwerp December 24th, 1947.
>
> "Sir, I have the honor and pleasure to bring to your attention that the General Assembly of the Court of Commerce has named you as member of the Marine and Maritime Commission and request you at the same time to keep yourself in accordance with the rules of internal order of the aforementioned commission.
>
> "Receive, dear sir, with my congratulations, my estimation.
>
> "Signed: the President E. Van Kerckhove.
>
> "It is addressed to Francois Verworst,
>
> "J. Rayestraat, 27, Brussels."

Then the cross examination is taken up by Mr. Zisgen.

• • •

[585] "Q. About how many ships both loading and discharging to you personally survey in a year, Captain? A. I cannot tell you.

"Q. It is a very large number? A. Generally speaking in the port of Antwerp between 250 and 300 ships come in a month and we go generally on board of every ship. I not personally but if I do not go one of my colleagues go. It is rather difficult, to have a fair idea I have to look over the books.

Deposition of Francois Verworst

"Q. Well, as a matter of fact, you or one of your colleagues or two of your colleagues or three of your colleagues go mostly on board of those ships twice, do you not, once for loading and once for discharge? A. Yes, in the case that the ship loads here and discharges here. But take the case of Black Diamond, most of the time they first discharge the cargo in Antwerp then go to Rotterdam, Hamburg and Bremen and afterwards they come back; that is a different application but it may be like some other ships they discharge here and after discharge they start [589] right away with the loading.

"Q. The book which you have before you contains no description of the stowage of the naphthalene on the Black Gull does it? A. No, sir, only 'after deck bags of naphthalene.'"

There it is, "bags."

"Q. And you are relying on your memory when you are telling us how it was stowed on the after deck? A. Well, they always do it the same way all the time. They always do it in the same condition.

"Q. So you are assuming that in the case of the Black Gull in July 1952 the stowage was what you have usually seen? A. Yes.

"Q. You do not particularly remember it? A. No. Sorry, sir, but if there was something wrong with it I would have marked it on the certificate.

"Q. But you are relying on the usual method plus the absence of notations on the certificate? A. Yes."

• • •

"Q. What do you know of the characteristics of naphthalene? A. When we are not sure about any cargo, we [590] consult our books we have.

"Q. What books are they? A. American books, English books, French books.

*Deposition of Francois Verwors*t

"Q. Can you name them for me or some of them? A. We have the book 'Dangerous Cargo' from the Minister of War transport. We have the same book in French given by the French Government. We have a standard American book given out by the Department of Commerce.

"Q. Is that 'Modern Ship Stowage'? A. Yes 'Modern Ship Stowage.' Then we have Thomas's book on stowage. We have a French book but I forgot the name of the writer, I am not sure.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too."

• • •

"Q. Have you Dr. Jules Aeby's book? A. Yes.

[591] "Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

"Q. I'll show you a book, which has been marked Libelants' Exhibit"—9—"for identification"——

• • •

its present number—"which has been marked Libelants' Exhibit 9 for identification. Is that Dr. Aeby's book to which you refer? A. Yes, but it is not the latest one."

• • •

"Q. Do you know that the vapor of naphthalene is explosive? A. Yes.

"Q. Where did you find that out? A. I have learned it and read in books.

"Q. Which books? A. Chemical books.

"Q. You knew that at the time the Black Gull was—— [592] A. Yes.

"Q. Did you know that there was danger of fire occurring to naphthalene in 1952? A. Yes.

"Q. Was that a matter of general knowledge at Antwerp at that time? A. Yes, sir, I suppose everybody knows. I have read it in books."

• • •

Deposition of Francois Verworst

"Q. The naphthalene stowed on the after deck on the Black Gull at Antwerp was not covered and protected from the rays of the sun? A. No, sir."

• • •

"Q. Actually, Captain, you did not take into consideration at the time you were on the ship the possibility or the likelihood that there might be passengers on the ship and that they might smoke, did you? A. As I told you, sir, we are not interested in the crew or in the passengers.

"Q. You gave no thought to the crew or the passengers? A. It is not my mission. My mission consists only in verifying if all the necessary precautions have been taken."

[593] "Q. The naphthalene stowed on the after deck on the Black Gull at Antwerp was not covered and protected from the rays of the sun? A. No, sir.

"Q. Do I take it that you disagree with Dr. Aeby as to the proper manner of stowage of napthalene on deck? A. Yes.

"Q. And that you did disagree at that time? A. Yes, and a proof of it, if I may point out to you that in his new book he has changed, he has said that it is 'preferable.'"

And the word "preferable" is quoted.

Then Mr. Zisgen continuing:

"Q. In your opinion, in July 1952 the covering of [594] the napthalene would not have averted any danger, is that correct? A. If I have well grasped the question, the covering of the napthalene would not have averted any danger? Is that what you asked?

"Q. Would have lessened any danger. A. If gases would have been produced, gases can evaporate more easily than if it had been covered."

• • •

"Q. Once the ship has sailed and a certificate in the form of"—Petitioners' Exhibit M—"concerning her load-

ing has been issued, you have no occasion as a rule to issue another certificate; have you not? A. No, sir, never. We never do for the same shop."

Q. For the same ship and for the same voyage? A. No, oh, no.

"Q. Is this your signature at the bottom of the sheet which I show you. A. Yes."

• • •

[595] Mr. Pyne: This document marked at the examination as Libelants' Exhibit 8 for identification, Mr. Zisgen inquires:

"Libelants' Exhibit 8 for identification is in the English language, is it not, Captain Verworst?

"A. Yes.

"Q. When did you sign that? A. I could not remember that. I do not remember when I signed it.

"Q. Does your book contain any reference of an application for that document? A. No, sir.

"Q. You remember you signed it? A. Yes, but which date I do not remember.

"Q. Do you remember who asked you to sign it? A. No, sir, I cannot remember.

"Q. It was not before the Black Gull sailed? A. No.

"Q. It was after that? A. It was after that but I cannot tell the exact date.

[596] "Q. Do you remember how long after? A. No. I cannot say any date because I am not sure.

"Q. If no application was made for this certificate Libelants' Exhibit 8 for identification, how is it that it bears this stamp of the Nautical Commission of the Tribunal of Commerce? A. Because we sign it, my colleague Captain Casteleyn and myself and we put the stamp.

"Q. But it is not an official certificate of the Nautical Commission? A. No, sir.

Deposition of Dr. Jules Aeby

"Q. The official certificate is Jolund Exhibit 4 for identification? A. Yes."

And that Exhibit 4 is now Petitioners' Exhibit M on this trial.

• • •

"This document, Captain, which has been marked Exhibit 8 for identification you say was signed by both you and Captain Casteleyn? A. Yes.

"Q. But you cannot recall when? A. No. Otherwise I would say it.

[597] "Q. Does that document represent your true and personal opinion and your best recollection of the facts?"

And the witness says "May I read it first?" and he reads it and answered "Yes."

• • •

[598] Dr. Aeby's deposition, • • •

"Q. Doctor, I am going to ask you to assume that an ordinary cargo vessel which is fitted with a midshiphouse, has forward of the midshiphouse three hatches and aft of the midshiphouse two hatches and that that vessel has a cargo of crude napthalene which is in burlap jute bags carried on her deck both forward of the midshiphouse and also aft of the midshiphouse and that those bags of napthalene are fastened and secured in place with rope nets but not otherwise covered and that they are placed in tiers or layers five or six bags or thereabouts in height. I am going to ask you to assume that that vessel with that cargo of naphthalene on the [599] open deck sailed from Rotterdam July 11th, 1952, bound for New York and of course on a course through the North Atlantic and I am going to ask you to assume that the log book, the deck log book of that

vessel shows the temperatures recorded at the end of each four hours watch and that all of these temperatures are in Centigrades and that on the first day, July 11th, the temperatures ranged from the highest of 18°C at noon time to the lowest of 16°C at 8 o'clock in the morning and 16°C at midnight. That on the following day July 12th the highest temperature was at 4 o'clock p.m. 18°C, the lowest 16°C at 4 a.m., that at 8 p.m. it was 18°C and the other watches 17°. That on July 13th the highest temperature was at noon 22°C, the lowest 17° at midnight and the other watches were 18° four in the morning, 21° 8 o'clock in the morning 20°C 4 o'clock in the afternoon 19° at 8 p.m.

"That on July 14th the highest was 22° at noon, the lowest 16° at 8 am and that at the other watches was 4 am 17°, 4 pm 21°, 8 p.m. 19°, midnight 18°.

"July 15th, highest at 4 in the afternoon, 4 p.m., 23°, the lowest 19° at 4 a.m. and midnight, 20° at 8 am and 8 pm and 22° at noon.

[600] "July 16th: the highest was 20° at 4 am, 19° at 8 am, 18° at noon, 19° at 4 pm, 17° at 8 pm and midnight.

"July 17th, the highest temperature was at noon 23°.

"On the other watches 17° at 4 am, 16° at 8 am, 22° at 4 pm, 21° at 8 pm, 22° midnight.

"That on July 18th on which day a fire occurred on that vessel, the highest temperature was 25° at noon, the lowest at 4 am 19°, 8 am 20°. At noon the highest temperature was 25° and at 4 pm 23°, at 8 pm 22°, and I am going to ask you to assume that at or shortly after 11 o'clock at night, 11 p.m., 23 o'clock, a fire was discovered in the napthalene abreast that portion of it that was abreast of No. 4 hatch, which is one of the two hatches aft of the midship-house. I am going to ask you to tell us whether or not in your opinion [601] the sun's rays could have been either a cause or a contributing cause to that fire."

• • •

Deposition of Dr. Jules Aeby

• • • we presented the witness also with a copy of the plan of the ship itself, which had then been marked for identification and has now been marked in evidence here as an exhibit.

And with those additional facts given to him, the question is repeated:

"I am going to ask you now based on those facts, whether or not in your opinion the rays of the sun which had occurred on that voyage have or could have been a cause or a contributing cause of the fire [602] which broke out in the napthalene on deck on the port side of the vessel alongside of No. 4 hatch. A. My answer is no.

"Q. Would you be kind enough, Doctor, to explain or define for me what is meant by flash point of a commodity? A. The flash point of a commodity is the temperature at which the commodity takes fire when approached by an open or naked flame."

• • •

Those temperatures are all in centigrade, are they not?

Mr. Pyne: That is right—the question to the witness so stated.

• • •

[603] "Q. Is it true, Dr. Aeby, that in respect to carriage of goods at sea, many commodities may be dangerous, hazardous, semi-hazardous, by reason of different factors? A. Yes, that is so."

"Q. In your work 'dangerous goods' are your remarks —I am referring to any or all editions that we have been discussing this morning—are your remarks under the heading of packing and stowage meant to be absolute? A. No.

"Q. Could you explain, sir? A. My explanation is given very clearly in the last edition in which I say that my recommendations will serve as guide and not as regulations."

• • •

Nils Valen—For Petitioner—Direct

[606] Mr. Pyne: Mr. Valen, will you take the stand?

Your Honor, Mr. Valen, whom I am now calling, was the third officer of the Black Gull.

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[608] NILS VALEN, sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Valen, by whom are you now employed? A. Sigurd Herlofsen & Company.

Q. Are you presently a member of the crew of any vessel, and if so, what vessel? A. On board the Black Hawk.

Q. Is the Black Hawk in the Black Diamond Steamship Corporation service? A. Yes.

Q. Are you a licensed mariner? A. Yes.

Q. And what license do you hold? A. Mate's certificate.

Q. Is that a Norwegian license? A. Yes.

Q. How long have you held that mate's certificate? A. Since June '47.

Q. All told, total number of years, how long have you been going to sea? A. Since March 1937.

Q. Were you formerly a member of the crew of the Black Gull? A. Yes.

[609] Q. When did you first join the Black Gull? A. April 4, 1951.

Q. And did you remain on board in service of the Black Gull down to the time of the July 1952 fire? A. Yes.

Q. In what capacity? What was your job on the Black Gull? A. Third officer.

Q. Before you served on the Black Gull did you serve on any other vessel in the Black Diamond Steamship Corporation service? A. Yes.

Q. What vessel or vessels and for how long? A. I was on board the Black Heron from October 1950 until the beginning of February 1951.

Mr. Longley: Is that the Black Heron?
(Record read.)

Q. Is that all the service on the Black Diamond Steamship Corporation vessels in that service prior to joining the Black Gull? A. Yes.

Q. Now, after you left the Black Gull, have you continued in service on vessels which were in Black Diamond Steamship Corporation trade? [610] A. Yes.

Q. What vessel or vessels have you been serving on since the Black Gull fire? A. Black Falcon, Black Heron and Black Hawk.

Q. How long were you on the Black Falcon? A. From August 1953 until October of the same year.

Q. How did the Black Falcon compare with the Black Gull? A. They are alike. They are sister ships.

Mr. Pyne: I have, your Honor, a set of several photographs of sections of the Black Falcon. They were taken, as shown on their face, in February of this year. I have shown them to the cargo proctors beforehand.

Q. I will show you a photograph (handing to witness) and ask if you can tell me what part or portion of the vessel represented on that photograph is indicated. A. The forward part of the lower bridge seen from aft.

Q. Which side of the lower bridge? A. The port side.

Q. And how do these conditions shown in that photograph—that is, the structural conditions of the [611] decks, rails, bulwarks—compare with the conditions which existed on the Black Gull during the voyage on which the fire took place? A. They are exactly alike except the furniture there.

Mr. Pyne: With the permission of my brother attorneys, your Honor, may I state I was personally present when these photographs were taken and that except for the two chairs and the table all of the other articles to which he is referring, which are shown in this photograph, are games or parts of games, shuffleboard of one type or another.

There is a thing that looks as if it might perhaps be a cigarette or cigar container, but that is not the case, it is part of a game.

With that explanation and the witness's testimony I will offer the photograph in evidence.

(Marked Petitioners' Exhibit O.)

Mr. Pyne: Unless there is some objection, your Honor, I can also go on and state, and it will save time if I state exactly what parts are here of these various parts shown.

The Court: Any objection to his attempting that?

[612] Mr. Longley: I think it would be better to have the witness state it.

Q. I show you another photograph (handing to witness) and ask if you will state to us what is indicated or shown there. A. It shows the lower bridge on the port side.

Q. Looking from where to where? A. That is, it looks as if they had been standing about midships and looked toward port.

Q. I notice on the right-hand side of that photograph there is a stairway or ladder. Where does that lead to? A. Up to the upper bridge.

Q. When you say the upper bridge, is that the navigation bridge where the pilot house is and then the open wings on each side? A. Yes.

Q. And how do the conditions in that photograph compare with the conditions, arrangements, structural and other, on the Black Gull on the July 1952 voyage on

which the fire occurred? A. Exactly the same as on the Black Gull.

Mr. Pyne: I offer that in evidence, your Honor.
[613] (Marked Petitioners' Exhibit P.)

Q. I show you still another photograph (handing to witness) and ask you to identify what part or portion of the vessel is shown there? A. It shows the port side of the lower bridge. That is from forward looking aft.

Q. And again, how did the conditions compare with those on the Black Gull as of July 1952? A. Yes.

Q. I say, how do they compare? A. They are alike.

Mr. Pyne: I offer that in evidence, your Honor.
(Marked Petitioners' Exhibit Q.)

Q. I show you still another photograph (handing to witness) and ask you to identify, if you can, what part or portion of the vessel is shown there? A. The picture is taken from the port side lower bridge and it shows the sun deck, which is about the boat deck, and also the port lifeboat.

Q. How do the conditions in that photograph compare with the conditions on the Black Gull on the July 1952 voyage prior to the fire? A. They are the same.

Mr. Pyne: I offer that, your Honor, as an
[614] exhibit.
(Marked Petitioners' Exhibit R.)

Q. I show you still another photograph (handing to witness) and ask you to identify the part or portion of the vessel shown. A. It is the port side of the boat deck taken from forward, showing aft, and is the after part of the boat deck.

Q. And how do the conditions there compare with those on the Black Gull on the July 1952 voyage prior to the fire? A. They are the same as on the Black Gull.

Q. Over on the left-hand side lower portion of that photograph there is an article or piece of furniture shaped like a bench. Will you tell me what that is? A. It is a lifebelt chest.

Mr. Pyne: May I offer that in evidence, your Honor?

(Marked Petitioners' Exhibit S.)

Q. Will you tell us, Mr. Valen, how if at all the arrangements on the Black Gull on the starboard side of the lower bridge and on the starboard side of the boat deck compared with the arrangements, [614a] equipment and so on, which were on the port side? A. Yes, they were alike.

[615] Q. On the starboard side of the boat deck on the Black Gull, was there a box such as shown in this last photograph, Exhibit S, containing life preservers? A. There was one exactly like it.

Q. In service on Black Diamond vessels, that is, on vessels in Black Diamond service, how many round trip voyages, approximately, between European and United States ports, have you made? A. Nineteen or twenty voyages.

Q. Does or does not that include all of the voyages, both before, during and after your service on the Black Gull? A. Yes.

Q. When the Black Gull loaded at Antwerp and Rotterdam early in July 1952, for a voyage to the United States, were you present during that loading or a part of it? A. Yes, partly.

Q. When you say "partly," will you explain what you mean by that? A. We were running watches.

Q. When you were running watches, do you mean by that that you were on deck during your watch? A. Yes.

Q. When the Black Gull sailed from Rotterdam on [616] that voyage—and if need be, you can look at the

log book, but I take the date July 10, 1952—did you see the deck cargo on the Black Gull? A. Yes.

Q. As third mate on the Black Gull, while the vessel was underway navigating, did you stand a regular watch? A. Yes.

Q. What was the watch, where were you and what did did you do—just generally? A. I was on the watch from 8 to 12 in the morning and 8 to 12 at night. I was all the time on the bridge and had to do with the navigation of the ship, lookout, etc.

Q. Excepting for your times on duty on the bridge in the 8 to 12 morning and night watches, were you on the bridge as watch officer at any other time ordinarily and usually? A. I was on the bridge at night relieving the chief officer in order that he could go and get his supper.

Q. You have stated that you were on deck while the Black Gull was loading cargo during your watch. Now what work did you do at that time? A. It was my job to see that no damage was caused to the ship or the cargo.

[617] Q. Was it part of your job while you were deck officer to make entries in the rough deck log? A. It was my job to enter into the scrap anything that happened on my watch.

Q. And did you make those entries at the time in the regular part of your duty? A. I used to do it at the end of the watch.

Q. Refreshing your memory from Petitioner's Exhibit E which has been identified as the rough deck log, will you tell us that date and the hour, clock time, that the Black Gull left Rotterdam on the voyage in July 1952? A. (After examining) It was Thursday, July 10th, 1952, at 22.33 o'clock.

Q. In the loading and stowing of the cargo on the Black Gull for this voyage, who performed the actual work of the loading and stowing? A. Stevedoring firm.

Q. During the loading and stowing at any time did you, as deck officer or otherwise, ever give any orders, instructions or directions with respect to the loading and stowing? A. No.

Q. Now when the vessel, the Black Gull, sailed from Rotterdam at the time and on this voyage that you mentioned, did you personally see the deck cargo [618] A. Yes.

Q. Briefly, what was the deck cargo? A. It was bags of naphthalene on the forward and after deck; there was also 33 drums of chemicals on the after deck; then there was a sailing yacht on No. 2 hatch.

Q. Will you tell us how this naphthalene was stowed on deck? A. It was stowed there fore to aft, a space three feet away from the hatch coaming and on the sides there was something like a fence of dunnage, spaced about one foot off the bulwark, and there were stores six bags high. The lowermost tier was stowed athwartship with a small space between every third bag.

Q. Were the bags secured or made fast in any way? A. We had nets of manilla rope on the top and sides—on top and on the sides.

Q. You have stated that the lowermost, the bottom tier of bags, had spaces between the bags, is that right? A. Yes, it was a small space between each third bag.

Q. For what purpose? A. In order that water could get out.

Q. How about the other tiers up above the first or lowermost tier? A. They were stowed fore and aft, [619] tightly together.

Q. Except for the burlap or jute bags themselves and manilla nets which you have mentioned, was the stow of napththalene covered in any other way? A. No.

Q. What was the condition of this stow of naphthalene in bags when is was completed, in so far as concerned the top and the sides of the stow? A. They were stowed tightly together—it was a compact stowage.

Q. On the top or on the sides of the stow, were there any openings or crevices between the bags or in the bags any place? A. No.

Q. If an article of any kind were dropped on the stow or thrown against or blown against the sides of the stow, could that article find its way into the inside of the stow? A. No.

Q. No? A. No.

Q. You have told us the number of voyages you made between Europe and the United States on vessels in Black Diamond service—how many did you say there were? A. Nineteen or twenty voyages.

Q. On any of those voyages other than the July [620] 1952 voyage on the Black Gull, did those vessels carry deck cargoes of crude naphthalene in bags? A. Yes.

Q. And how did the method of stowage on those other voyages and trips compare with the method of stowage on this Black Gull trip on which the fire occurred?

Mr. Longley: If the Court please, I think at this point I will object to this line of examination. It doesn't make any difference, I submit, if there were a thousand voyages stowed exactly like the Black Gull, if in fact the stowage on the Black Gull was forbidden by law. I will object to this line of interrogation therefore, as irrelevant.

The Court: That would be my deciding the question whether the manner of stowage was forbidden by law, on this objection to the introduction of evidence, and I do not think that that is a proper way of deciding the question. If I should find that the method of stowage was forbidden by law and if I should find that that made any difference under the fire statute and the Carriage of Goods by Sea Act, why of course the fact that it had been infringed over and over again wouldn't make any difference, but for the present I will overrule your objection.

[621] Mr. Longley: So that I will not keep repeating it, may it be understood that that will be my position on that line?

The Court: Oh, yes.

Mr. Longley: I thoroughly understand your Honor's wish to reserve decision on it.

The Court: Oh, yes, that question of law cannot be eliminated from the case. It won't be eliminated by your failure to repeat it constantly.

Mr. Pyne: You probably will have to have the question read to you.

(The interpreter speaks to the witness.)

A. It was the same stowage.

Q. You have made reference to drums, as you called them, of a chemical, and I think you stated 33 drums of a chemical which were stowed on the deck of the Black Gull. Where were they stowed? A. They were stowed at the forward part of the masthouse on the after deck, that is, the masthouse is about abaft of the No. 4 hatch.

Q. With respect to the hatch coaming of No. 4 hatch, or the after hatch coaming of No. 4 hatch, where were these drums of chemicals? A. This was a space away from the hatch coaming.

[622] Q. Do you recall approximately how wide that space was? A. About a couple of feet.

Q. Will you tell us how those drums of chemicals were stowed? A. They were stowed closely together and lashed with wire, and there was a tarpaulin on top of them.

Q. Did you yourself take any part in the stowage of those drums of chemicals? A. I was along lashing same.

Q. Was anybody else working on or assisting in the stowage of those drums, and if so, who? A. Do you mean by lashing?

Q. Well, who did any work at all in the stowage of those drums of chemicals, who was present and who did any work

in connection with it? A. The longshoremen loaded and stowed them and I was along assisting in lashing them, together with the second officer and assistant to Captain Hollaar.

Q. Now while you were on the Black Gull on this voyage on which the fire occurred, will you tell us whether or not on the open deck anywhere there were any signs or notices of any kind concerning smoking? A. There were warnings as to smoking in several places.

[623] Q. I show you, Mr. Valen, a plan of the Black Gull which has been marked Libelants' Exhibit 17, and I will ask you to please mark on that plan with a red pencil the location of each of those signs (handing witness)? A. There were painted such warnings, one on each side of the forecastle bulkhead at the ladder (marking).

Q. Let me interrupt for a moment. What was the type of sign? What did it read? How big were the letters? A. It was written in English "No Smoking," with red letters on white background, and the letters were about five inches high.

[624] Q. Will you continue, Mr. Valen, and mark the exhibit at any other place or places, if there were any, where such signs were painted? A. (Witness marks on exhibit) At the forward masthouse, in the after part of the masthouse, the same masthouse, in the forward and after part of the next masthouse.

Q. When you say "next masthouse," will you identify it; is it forward, the second one from the bow? A. It is still the second one, the forward part of midships.

Q. The forward part of the midships what? A. Midships house. At each side of the midships house right abreast of the gangway entrance, the after part of the midship house, on the forward part and after part of the masthouse on the after deck.

And there was one in the forward part of the poop deck, at least one in the forward part of the poop deck.

Q. Have you completed, to the best of your recollection, the location of each and all of those signs? A. Yes.

Q. Was there any sign or signs or that or any [625] other kind on the boat deck anywhere? A. No.

Q. And how about the lower bridge. Were there any such signs on the lower bridge? A. No.

Q. Where, Mr. Valen, on the Black Gull and particularly on this July 1952 voyage, was your cabin or sleeping quarters? A. Room No. 2. It is room No. 2 on the starboard side, figured from forward, on the main deck.

Q. That is in the midships house? A. Yes.

Q. Where were the crew's quarters, except the officers and stewards? A. Aft.

Q. That would be in the poop? A. Yes.

Q. At any time, Mr. Valen, did you personally ever go inside or see the inside of any of the passenger cabins? A. Not during that voyage.

Q. At any time I asked you.

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[626] A. I lived in one once.

Q. For how long? A. For about a week.

Q. And when was that? A. The first week that I was on board.

Q. In what month and year was that? A. In the beginning of April 1951.

Q. And which cabin was that? A. The aftermost room on the boat deck.

Q. At that time will you tell us whether or not there were any signs or sign in that cabin?

Mr. Longley: I will object to the question as irrelevant.

The Court: Sustained. You mean because of the time?

Mr. Longley: This is something more than a year, about a year and three months, before our voy-

age. He says there is a sign in this one cabin where he lived. There may have been a sign at that time in every cabin on the ship. It does not make any difference as to our voyage.

The Court: I think it goes to the weight. The objection is overruled.

A. There were two signs in there. On one it stated when the meals were, that you should not smoke [627] in the dining room, and which lifeboat you belong to, and where the lifebelts were to be found.

Q. You spoke of two signs; what we want to know is what is your best recollection as to the contents of both those signs. A. I have stated that. On the other sign it was written "Don't throw cigarette butts, cigar butts or burning matches out through the porthole or over the ship's side."

Q. Have you now completed your answer? A. Yes.

Q. On this voyage of the Black Gull out of Rotterdam, between Rotterdam and the United States, in July 1952, leaving Rotterdam July 10th, did you ever see any person smoking on the deck, anywhere on any deck of the Black Gull? A. No.

Q. Did you yourself personally while on deck or while on duty on the Black Gull ever smoke? A. I never smoked on deck.

Q. Did you smoke anywhere while you were on duty? A. Smoked in the chart room and the wheel room or wheelhouse.

Q. On the night of the fire what time did you go [628] on watch or on duty? A. About half past eight.

Q. And where did you go then? A. I was on the bridge.

Q. Previously that evening had you also been on deck duty, the navigation bridge or pilothouse? A. Yes, I had previously relieved the chief officer from about 6 o'clock until 7:30.

Q. During the time that you were relieving the chief officer at the time you have mentioned, did the chief officer or the captain or both of them come to the navigation bridge? A. Yes, the chief officer came to relieve me again, and the master also came up.

Q. When did the master come up and for what purpose? A. The captain came up at about the time we passed Nantucket Lightship.

Q. What time, and if need be refresh your memory from the log book, did you pass Nantucket Lightship? A. That was at 1924.

[629] Q. Did you take an observation of Nantucket Lightship? A. Yes.

Q. What was it? A. It bore 360 degrees true, 8 miles off by radar.

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[630] Q. Mr. Valen, during the time that you were on watch, on the bridge relieving the mate for dinner, did the captain come to the bridge, the navigation bridge? A. Yes.

Q. Did the chief officer come there? A. Yes.

Q. Do you know why or for what reason they came? A. The captain came up because I rang down by telephone to tell him that we would soon pass the Nantucket Lightship, and the chief officer came up in order to relieve me.

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[631] Q. Except for passing Nantucket, was there any other time that you know or heard of when the captain left dinner? A. Will you read it please?

(Question read.)

A. Not that I know.

Q. Now, with respect to the chief officer, how about him? A. I don't know of any reason.

Q. Well, did he come at any time except to relieve you during dinner?

Mr. Longley: If your Honor please, we are wasting an awful lot of time on this.

Mr. Pyne: I will take it for the two men.

Mr. Longley: It is of complete unimportance and highly irrelevant whether the master and the chief officer left the dinner or whether they did not. The passengers said that but it has no relation to this case. We are wasting time.

The Court: Well, I can only tell that by prophecy.

Mr. Pyne: I am glad to hear it is unimportant, your Honor, because I did not know what inference or argument was going to be made because of that [632] passenger's testimony.

The Court: All right, then we can drop it.

Mr. Pyne: I am quite satisfied.

Q. Now, on the Black Gull, was there any regular routine with respect to the wheelsman and the lookout changing places? A. There were two men on watch on the Black Gull, and they relieved each other in such a way that they had one hour at the wheel and one hour at the lookout.

Q. Now, while you were on watch on the night of July 18, 1952, as deck officer, did anything unusual occur, and, if so, when and what? A. Yes. The time was about ten past eleven when I went out on the starboard wing, when I heard a sound which I thought was coming from aft.

Q. How do you fix that time of ten past eleven? A. Yes, I know, because the ordinary seaman had been at the wheel from ten to eleven and he went down soon thereupon soon before.

Q. Can you describe as best you can the sound that you mentioned? A. I can say it was a hollow dull bump sound.

Q. I did not get the word after "hollow."

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[633] Q. Now, did you do anything and what did you do? A. I turned around and then I saw some smoke and a small flame coming from the after deck portside just abaft—abreast of No. 4 hatch.

Q. Did you take any action or do anything then? A. I ran down on the port side to the sun deck which is above the boat deck.

Q. I will show you Petitioners' Exhibit R and ask you whether you can indicate what deck you are talking about (handing to witness). A. I talk about that sun deck there (indicating).

Mr. Pyne: Can we mark it in any way or describe it, your Honor?

The Court: You can have him mark it "SD."

Q. On what level is that deck—level with what? A. It is at the same height as the deck on the lower bridge.

Mr. Pyne: In accordance with your Honor's suggestion, might I put "SE" on that deck that he pointed out?

Mr. Longley: This is on Exhibit R?

Mr. Pyne: That is on Exhibit R, yes.

The Court: What does "E" stand for?

Mr. Pyne: I understood your Honor to say [634] to have it marked "SE."

The Court: "SD."

Mr. Pyne: Oh, "SD."

(Mr. Pyne marks.)

Q. Now, what did you do when you got to that sun deck? A. I ran back in order to call the master and I met him in the alleyway to his room.

Q. And what did you do on that deck? A. I ran back to the bridge and gave a signal which passed to all passenger rooms and alleyways--which passes to all passengers

and crew alleyways. Then I ordered the man at the wheel to give port helm. Then I rang the engineer on watch to ask for water on deck. And at the same time as I ordered port helm the captain came on the bridge and ordered "Hard aport," and took over the command.

Q. What then did you do? A. I ran down on the boat deck and then on to No. 4 hatch, and took a water hose and commenced to extinguish.

Q. When you got to the main deck where No. 4 hatch was, was there any other person or persons there? A. Yes.

Q. Who was there? A. On the boat deck I encountered the chief officer and the second officer, and [635] there were several others; and on the No. 4 hatch there were also several others.

Q. Who were these others? Not necessarily by name, but were they members of the crew or not? A. Yes, they were members of the crew.

Q. Will you tell us what you did when you got to the main deck? A. I got hold of a hose and commenced to extinguish.

Q. From where did you work? A. From the port side of the No. 4 hatch.

Q. Will you tell us what you saw when you arrived at that spot? A. I saw that there was a fire on the top, and I was just going to jump up on top of the napthalene, because it didn't burn in the tier that was closest to the No. 4 hatch, but then I saw that it was burning between the second and third tiers from the top, and I put the water on there in order to try to extinguish it and prevent the fire from getting to No. 4 hatch.

Q. When you jumped or got onto the top of No. 4 hatch you have mentioned that you saw fire on top. Will you explain where on top you saw the fire? A. It was on top of the stowage of bags, about at [636] the middle of the stowage.

Q. When you say "middle," are you referring to fore and aft or side to side? A. Sideways.

Q. And abreast of No. 4 hatch, how was it, in a fore and aft direction, that middle spot? A. It was a little forward of the middle of the hatch.

Q. You have referred to the second and third bags. Will you explain what you mean by that?

The Interpreter: He said "tiers."

Mr. Pyne: I am sorry, the second and third tiers of bags.

A. I meant on the side of the stowage between the second and third tiers.

Q. Which side? A. On the inside of the stowage.

Q. And second and third tiers from where? A. From the top.

Q. What did you see there? A. I saw that it was burning there.

Q. With respect to the bags above that place on the side where you saw the burning on the side, what was the condition on the top? A. They didn't burn.

[637] Q. Now did you prepare a rough drawing or diagram at my request to illustrate what you saw when you first got on top of No. 4? A. Yes.

Q. When did you do that? A. Yesterday.

Q. I will show you this piece of cardboard or article (handing to witness), and will ask you if that is the drawing that you prepared? A. Yes.

Q. I will ask you to take it, if you will, and explain to us just what you mean, and illustrate where it was, that you saw these fires that you are mentioning when you got on top of No. 4 hatch. A. This is No. 4 hatch (indicating).

Mr. Pyne: He has it marked in Norwegian. Would you be good enough, 'aptain Lynner, to write the English under the Norwegian in each of these places where the witness has written in Norwegian.

The Interpreter: That is the port coaming, No. 4 (writing).

A. (Continuing) This gangway (indicating).

Q. Let me ask you this: by "gangway" do you mean the open passageway between the hatch coaming and the side of the stow of bags of napthalene? [638] A. Yes.

Q. Proceed. A. Stowage seen from the inside. Top of stowage. Forward part. Seen from forward end.

Mr. Pyne: Does he mean this line which is nearest forward, to be the end of the stow, or did it extend beyond that?

The Witness: No, the stowage is further forward.

Q. Using that cardboard and diagram, will you explain now again to us where you were, what you saw, and what the marks particularly the red marks on that diagram indicate? A. I was standing about here (indicating).

Q. Put an X mark for "here"—"I was standing about here." A. Standing here (indicating). And I saw that it was burning over there.

The Interpreter: Pointing to the red mark.

Q. On the top? The red mark on the top of the stow. A. On the top, yes.

Q. Now proceed. A. And I was going to jump on top of the naphthalene in order to get a better chance to extinguish, but then I saw that it was burning between the second and third layers from on top.

Q. Indicating the red mark on the side of the stow.

[639] The Interpreter: Indicating the red mark on the side of the stow.

A. (Continuing) Then I remained standing here.

The Interpreter: Marked with a cross.

A. (Continuing) And played water against the fire there—had the water playing against the fire there.

Mr. Stonebridge: May I ask one question. Was it burning on the inside of the stow when you looked there?

The Witness: Yes, that is the reason I did not jump on top of the naphthalene. But up here (indicating) it didn't burn.

Mr. Pyne: Pointing to the top tier at the edge or side.

The Interpreter: Yes.

Mr. Pyne: May I offer that diagram now as an exhibit, your Honor.

(Marked Petitioner's Exhibit T.)

Q. Were there any other hoses or any other fire extinguishing apparatus being used while you were there on top of No. 4 hatch? A. Yes, while I was standing there I saw another hose being played on the fire and that man must have been [640] standing behind a . forward of myself.

Q. When you say standing behind and forward, does that mean one hose or different hoses, or different men? A. I saw another hose being played on the fire. That man must have been standing behind and forward of me.

Q. Apart from hoses, was anything else used? A. Yes, later I saw fire extinguishers being used.

Q. Who was using them? A. An a.b.

Q. From that point on, Mr. Valen, will you tell us what occurred, did you stay there or leave or move, where did you go and what happened? A. I moved aft somewhat in order to save the drums of chemicals, but then it was getting too hot, wherefore I moved to the after part of the masthouse and continued extinguishing from there.

Q. Is that the masthouse direct after of No. 4 house you are talking about? A. Yes, but there is a space in between.

Q. In between what; what space is it? A. Between the No. 4 hatch and the mast house.

Q. Did you go yourself between the No. 4 hatch and the masthouse? A. I went in between the No. 4 and the drums of chemicals.

[641] Q. What did you do there at that place? A. I moved on top of the drums of chemicals but then it became too hot to stay there, therefore I moved abaft, between the masthouse and No. 5 hatch.

Q. Now, what occurred, what happened after that, Mr. Valen? A. Somebody shouted to me because it was burning in strakes between the drums of chemicals and the No. 4 hatch and therefore I moved forward again and tried to extinguish that.

Q. Proceed, if you will, and tell us what happened. A. It started to burn between my legs, therefore I jumped up on the stowage of naphthalene on the starboard side, then it was one or another that took over the hose from me and then I went out on the poop.

Q. Where in the poop did you go and what did you see? A. I went down to all of the rooms.

Q. What rooms? A. The crew's cabins.

Q. And what did you see there and what did you do there? A. I saw that they were not in the rooms.

Q. Did you yourself receive any burn or burns or [642] injury? A. Yes.

Q. Well, tell us what they were and where you were when you were burned. A. I was on the poop when I was burned.

Q. How were you burned? I mean, where, what part of your body? A. I was burned on fists or hands, head, face.

Q. Did you, while you were in the poop, see anybody else there? A. Yes.

Q. Whom did you see?

(The interpreter speaks with the witness.)

The Interpreter: He asked if you want the names.

Q. Yes, if you know the names. A. I saw A. B. Gundersen, ordinary seaman Karlsen, young man Wold, mess boy Verbeeck.

Q. Where did you see those men and what were they doing? A. I saw Verbeeck down in the alleyway near the main deck.

Q. And what were they doing? A. To me it looked as if they were on the way up.

Q. Did you have any conversation or do anything with Verbeeck, the messboy? A. Not at that moment.

[643] Q. Well, at any time, did you, during the fire? What happened with him? A. I saw him on the poop and we tried to get out a small boat on the port side but we couldn't, we didn't manage because it was too much smoke, and we ran all of us down towards the tunnel shaft alley, but on account of sparks and smoke which came from a ventilator located there, there were some of them that ran back again.

Q. Go ahead. A. Then I ran up on the poop in order to get a hold of that and there I met a repairman and a motorman and I told him that they had to go down through the tunnel, and at the same time I asked the repairman if there were any others out on deck and he answered that Verbeeck was out on the deck.

And when I then went in through the door on the starboard side into the poop house, I felt like something hitting my hands. It was then that I burned my hands.

Then I went out again and got a hold of Verbeeck and we both ran down towards the tunnel but he tore himself loose and ran up again and I fell and hit my head against the steel bulkhead.

[644] Then I ran up the ladder again but when I reached the main deck in the poop house I ran right into flame or fire and smoke and I fell down the ladder again, and after a little while I crept over towards the tunnel again and then I went through the tunnel and into amidships.

Q. When you got midships, what did you do and where did you go? A. I went up to the bridge and down the king-post located forward of the bridge.

Q. What happened then? A. And I can remember as I was standing on top of the naphthalene stow on the starboard side of the forward deck, and then I don't remember any more.

Q. You lost consciousness? A. Yes.

Q. And when and where did you next regain consciousness? A. The first time I remember anything since then was 5 o'clock the next afternoon on the Gripsholm.

Q. Were you in the sick bay on the Gripsholm? A. Yes.

Q. And where and when did you leave the Gripsholm? A. I left the Gripsholm at Goteborg, about [645] eight days later.

Q. And then where did you go? A. I was in the nospital at Goteborg.

Q. And did you return to Norway from the Goteborg Hospital? A. Yes.

Q. When, about when did you return to Norway? A. About August 10th.

Q. And what was your physical condition then when you returned to Norway? A. I wasn't quite well.

Q. Well, were you bandaged? A. I had bandages on my hand and on my head, right side.

Q. Did you at any time go before the Norwegian Government authorities and make a statement to them in a maritime declaration? A. Yes.

Q. Do you recall where that was and about when? A. It was about August 26th, the same year, at Oslo.

Q. Were you still then bandaged, as you stated that you were previously? A. My hands were bandaged.

Q. When did you recover physically yourself so that you were able to return to work? [646] A. About November 10th, the same year.

Mr. Pyne: I think that is all I have of the witness, your Honor.

The Court: It might be well to suspend for lunch now and be back at ten minutes past two.

Mr. Pyne: May I put just one question more, your Honor, which I neglected?

The Court: Yes.

By Mr. Pyne:

Q. Before making this statement to the Norwegian Government authorities, before that did you make any statement, oral or written, to anybody? A. No.

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[647] *Cross-examination by Mr. Longley:*

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Q. Mr Valen, you have told us that you were employed by Sigurd Harlofsen & Co.? A. Yes.

Q. And you were so employed while you were on the Black Gull in 1952, were you not? A. Yes.

[648] Q. Who engaged you, that is, what official of Sigurd Herlofsen? A. It was the man that is signing on crews—Mr. Hansen.

Q. What is his position with Sigurd Herlofsen & Co.? A. His job is to sign on the members of the crew.

Q. Did you know Captain Inge Svendsen? A. Yes.

Q. He was marine superintendent for Herlofsen, was he not?

Mr. Pyne: I request that a time for this be fixed, your Honor.

Mr. Longley: In 1952.

A. I assume so.

Q. Why do you assume so?

Mr. Pyne: I move, your Honor, to strike out what the witness assumes.

Mr. Longley: Well, I am going into it, why he is assuming it. What more do you want?

The Court: It is cross-exmination.

A. I have heard it.

Q. You have told us that you have served on three different vessels in the trade of the Black Diamond Line? A. Yes.

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[649] Q. Do you know who owned these vessels? A. I know that they were handled by Sigurd Herlofsen & Co.

Q. That is all you know about it? [650] A. Yes.

Q. Between voyages of the various vessels on which you served, when you returned to Norway, did you report to the office of Sigurd Herlofsen & Co.? A. Yes, sometimes I did, sometimes I did not.

Q. You went into the office of Sigurd Herlofsen & Co. in Oslo, to whom did you report? A. Mr. Hansen.

Q. And did you also at that time report to Captain Svendsen? A. No.

Q. Hansen was Svendsen's assistant, was he not? A. I cannot say anything about that.

[651] Q. You told us that you had made 19 or 20 voyages between European ports and United States ports on Black Diamond vessels. A. Yes.

Q. Do you mean ten in one direction and ten in the other, about? A. 19 or 20 each way.

Q. Now, dealing with the westbound voyages, that is, from North European ports to United States ports, did I understand you to say that on each one of those voyages where you sailed there were carried a stow on deck of this napthalene? A. Yes, that is right.

Q. And in each one of these prior voyages on Black Diamond vessels the napthalene was stowed on deck at Antwerp and Rotterdam, was it? A. Yes.

Q. And in each case I understood you to say that it was stowed on deck as it was stowed the Black Gull on her last voyage? A. Yes.

Q. That is, it was stowed approximately 6 feet high, made fast by nets but without any cover other than the nets over the top or sides, is that correct? [652] A. That's right, except in regard to one voyage.

Q. Tell us about that one voyage. A. It was a voyage during the winter, a small part of the napthalene on deck, on the forward deck, was covered by tarpaulins in order that it shouldn't disappear—in order that it shouldn't become wet, and that tarpaulin was supplied by the shipper.

Q. Dealing with other voyages where no tarpaulins were carried, some 19 additional voyages, I take it from what you say, when these other vessels on these 19 voyages sailed from their last port of loading in Antwerp, their deck load of naphthalene in this case was completely uncovered except as there may have been rope slings? A. That's right.

Q. And the stow of napthalene in each of those cases remained uncovered from the time the ship sailed from her last port of loading until that napthalene was discharged at the port of discharge in the United States; is that so? A. Yes.

Q. What did you know, if anything, about the characteristics of napthalene? A. I know it is a kind of dangerous cargo.

[653] Q. Dangerous in what way? A. I don't know.

Nils Valen—For Petitioner—Cross

Q. Did you ever receive any warning from anyone about its dangers? A. I received orders not to smoke on deck.

Q. Who gave you those orders? A. The master.

Q. Did he tell you why you were not to smoke on deck? A. He said it was dangerous cargo.

Q. As third mate——

Mr. Longley: He was third mate, wasn't he?

The Interpreter: Yes.

Q. As third mate you had some supervision of the stowage of cargo on this vessel, did you not? A. No.

Q. You had nothing whatever to do with the stowage then? A. I had to see that it was stowed where it was supposed to be stowed and that it was stowed in such a way that the ship was seaworthy.

Q. Dealing with the various voyages on Black Diamond ships to which you have testified, did you see Captain Hollaar of Black Diamond on board those vessels? A. I never saw him on the voyages.

[654] Q. No, I didn't say that. When the vessels were in Antwerp and Rotterdam, did you not see Captain Hollaar on all these vessels while they were being stowed with naphthalene? A. Yes, several times.

Q. And he was on the Black Gull last before the start of the last voyage, was he not? A. I don't remember exactly.

Q. Now, as you had nothing to do with the stowage of the napthalene on the Black Gull on her last voyage, what occasion did you have to examine the stowage? A. I was doing cargo watches and doing that I had to see that the napthalene was stowed properly.

Q. Then you did have something to do with the supervision of the stowage of naphthalene? A. I couldn't make any decisions.

Q. Who did make the decisions as to where the napthalene was to be stowed and how? A. I received my orders from the chief officer on board.

Q. In any event, you know that on the after deck the napthalene was stowed, you tell us, six tiers high? A. Yes.

Q. And the stow extended from a fence along the [655] bulkwarks inboard to about three feet from the hatch coamings? A. Yes.

Q. That was the situation on the after deck at both port and starboard, was it not? A. Yes.

Q. Then there was a gangway or passageway about three feet in width extending along the hatch coaming, with the hatch coaming on one side and the stow of naphthalene on the other side; is that not right? A. Yes.

Q. And that passageway was the only way that the crew could go forward to their duties from their quarters in the poop, is that not correct? A. Yes.

Q. And the crew went back and forth through that passageway by watch, did they not? A. Yes.

Q. Throughout the 24 hours, day and night? A. Yes.

Q. Now, you have told us in answer to Mr. Pyne's questioning that there were various signs over the vessel in relation to smoking. A. Yes.

[656] Q. And you told us these signs were printed in English, did you not? A. Yes.

Q. All the members of the Black Gull, with one exception, were Norwegian, were they not? A. No.

Q. What others were there who were not Norwegian? A. There was one from the Faroe Islands.

Q. So there was a Scotchman from the Faroe Islands and a Belgian messboy? A. He wasn't a Scotchman; they were from the Faroe Islands.

Q. Well, he was not Norwegian? A. No.

Q. All the others, however, were Norwegian? A. Two Dutchmen.

Q. All right. You know some were not Norwegian. Is that all that you can think of that were not Norwegian? A. Yes.

Q. You yourself do not read English, do you? A. I read a little.

Q. The members of your crew in large part spoke only Norwegian, didn't they? A. All of them know a little English.

[657] Q. And the two Dutch citizens spoke Dutch and read Dutch, didn't they, if you know? A. They could speak English.

Q. In any event, I put before you Libelants' Exhibit 17 (handing to witness).

When Mr. Pyne examined you, you put some little red marks, which, I understood you, you said showed the location of various warnings against smoking is that correct? A. Yes.

[658] Q. Of all those marks you have put on that plan there are only two of them were at a position where any passenger could see them; isn't that correct? A. No.

Q. Where are the ones that the passengers would see? A. When the passengers came on board the first that they would see would be the signs at the gangway.

Q. You are pointing now to the ones amidships? A. Yes.

Q. That you have marked here, on port and starboard side. A. Yes.

Q. What other signs were there that could be seen by passengers on this vessel? A. "No admittance except for business."

Q. I am talking about warnings about smoking. A. It was painted here, it was painted there (indicating).

Q. Yes, you have told us that twice. I asked you whether there were any other signs or warnings about smoking that passengers could see on this vessel? A. They ought to be able to see these. They ought to be able to see these. And they ought to be able to see these two on the forecastle, and

they ought [659] to be able to see that on the masthouse, and maybe also the forward part of the poop.

Q. Did passengers walk on the main deck forward and aft? A. Not that I saw.

Q. Well, how could they see these signs then? A. They could see it from the lower bridge.

Q. They could see a sign there, and it is your opinion that from the lower bridge without a field glass or a spy-glass, they could read these signs; is that your point? A. Yes.

Q. You did not mix with the passengers yourself during the voyage, did you? A. No.

Q. You were not up on the deck where the passengers walked, were you? A. No.

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Q. The picture, Petitioner's Exhibit O, you have told us was a picture of the port side of the Black Gull, or comparable to the port side of the Black Gull? A. No, I have never said that.

Q. What did you say, then? A. That picture is similar to the Black Gull.

[660] Q. Well, that is what I said. Comparable, I guess, threw you off, I used the wrong word. This is similar to the deck of the Black Gull on the port side, as I understand it? A. Yes.

Q. And as I understand, this is the port side (indicating)? A. Yes.

Q. To where do these windows lead? A. Towards the forward deck.

Q. Dealing now with the picture marked Petitioner's Exhibit Q, this is also on the port side looking aft, is it not? A. Yes.

Q. And that is the deck on which the passengers usually walked? A. Yes.

Nils Valen—For Petitioner—Cross

Q. Now at the end of this deck as appears in this picture marked Petitioner's Exhibit Q, you will find to the left a companionway, a staircase, will you not? A. Yes.

Q. To where did that ladder lead? A. It goes down to the boat deck.

Q. And then there was a ladder that led from the boat deck down to the main deck? A. Yes.

Q. This picture, Petitioner's Exhibit S, shows at the right, does it not, the stairway leading down [661] to the boat deck from—you call this the sun deck in Petitioner's Exhibit Q? A. That is not the sun deck. That is the deck of the lower bridge.

Q. Well, all right. This petitioner's Exhibit S shows the stairway coming down to the boat deck from the power bridge deck? A. Yes.

Q. And then showing at the after end of this picture there is an opening in the bulwarks? A. There is an opening.

Q. And that is where the companionway was from the boat deck down to the main deck? A. Yes.

Q. One standing in this opening here and looking down the stairs would look immediately on top of the stow of naphthalene on the port side of the after deck of the Black Gull; isn't that true? A. He won't see right down on it.

Q. Why not? A. Because the bags of naphthalene are stowed somewhat abaft the foot of the ladder.

Q. I see what you mean. The stow of naphthalene about six feet high started about three feet aft of the bottom of the ladder; isn't that so? A. Yes, about three feet. A little more.

[662] Q. During the course of the voyage of the Black Gull, what occasion, if any, did you have to examine the stow of naphthalene on the after deck? A. When I was on watch at sea I had my watch on the bridge, and it was my job to look both ahead and astern.

Q. The only examination you made of the stow of naphthalene on the after deck was looking toward the stow from

your position on that vessel's bridge; is that what we are to understand? A. I was not allowed to leave the bridge.

Q. Well, I guess you probably indirectly answered my question.

Mr. Longley: Put my question to him and ask him if that is not so, that during the whole voyage the only examination he made on the stow of naphthalene in the after deck was from his position on the bridge of the ship.

The Witness: (Through interpreter) That is right.

Q. As I understood you, in answer to one of Mr. Pyne's questions, you said that there were no crevices or openings between the bags. How did you know anything about it? A. I could see it, because I had cargo [663] boats both at Antwerp and at Rotterdam.

Q. But during the course of the voyage you have told us the only way you saw it was from the ship's bridge? A. Yes.

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[665] Q. In any event, you had two levels in the poop where the crew lived? A. Really three because the boatswain and the carpenter was living up here in the house.

Q. Then I see up here in this plan a ventilator cowl up on deck, then a dotted line running down to the shaft tunnel. Is that the escape hatch? A. That hatch goes from this deck here and down into the shaft alley.

Q. Well, is that the one that we are talking about? A. Yes.

Q. Now, that is designed to permit the engineering staff to escape on deck in case there is a fire in the engine-room. Isn't that its purpose? A. I don't know that specially.

Q. Well, in any event there came a time that you could not go forward to where you were in the poop? A. Yes.

Q. And that was because there was a wall of flame from the naphthalene across the ship between you and amidships? A. Yes, on both sides.

Q. And then was the manhole cover off to the escape hatch or did you take it off? [666] A. I wasn't the first man going down there so I can't say.

Q. When you went there and looked down the hatchway, it was a round black hole, was it not? A. No.

Q. What lighted it up? A. There are lights in the shaft alley.

Q. Were the lights burning——

Mr. Pyne: If I am not unduly interrupting him, your Honor, I would like to direct your Honor's attention to this—it is the examiner who has been repeatedly calling this an escape hatch. The witness has never called it that.

Mr. Longley: That is what it is.

Mr. Pyne: It is a passageway.

Mr. Longley: It is a passageway, of course, but it is an escape hatch. What difference does it make what we call it—a hole, if you prefer.

Q. Were the lights still burning down below then? A. Yes.

Q. Did they burn down below the shaft alley when you eventually found you way forward? A. There was light in the shaft alley.

Q. You mean, I gathered from your testimony this [667] morning, you made two ineffectual efforts to go down that passageway and then you returned to the poop. Isn't that so? A. No, I haven't said so.

Q. Then I misunderstood you. I understood you to say that you went down past, partway, and came back again twice—that is wrong, is it? A. I didn't say that I went down into the shaft alley.

Q. No, I didn't say that either. I said you started down that ventilator to get to the shaft alley twice before you eventually went all the way, isn't that so?

Mr. Pyne: Pardon me again, your Honor, but let us call things by their proper name. The witness never said——

Mr. Longley: What do you want me to call it? I will call it anything you want.

Mr. Pyne: That is a passageway; it is neither a ventilator nor an escape hatch.

The Court: Suppose we stick to what the witness said.

Mr. Longley: Well, of course a manhole is only a hole——

Q. But this passageway was vertical, was it not? [668]
A. The manhole is at this floor here (indicating).

Q. Yes. A. And from the manhole there is a ladder going down to the shaft alley.

Q. And that is a vertical ladder inside the ventilator, is it not? A. There is no ventilator there.

Q. Well, inside of a round pipe there is a ladder that went down vertically? A. I can't remember that it was a round hole there.

Q. Wasn't the pipe you went down round to get from the lower deck of the poop down to the shaft alley? A. No.

Q. What was its shape? A. I will say that it was square.

Q. Anyway it was vertical. A. Yes.

Q. And what was the size of this square pipe? A. About 4 feet.

Q. About 4 feet square? A. About so (indicating).

The Interpreter: He says "about so," and he points about that (indicating).

Mr. Longley: About 4 feet square, yes.

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[671] Q. You told us, in answer to one of Mr. Pyne's questions, that you never saw anyone smoking on any deck during the last voyage of the Black Gull. Do you remember that statement of yours?

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[672] A. That's right.

Q. But you never were up on the deck where the passengers were, you told us, isn't that so? A. Yes, but I have been asked if I saw somebody and I said "no."

Q. That is fair enough. I never did either. Now, you smoke cigarettes yourself, do you not? A. Yes.

Q. And I think you told us that you smoked while on duty in the chart room and in the wheelhouse. A. Yes.

Q. The other officers of the ship smoked while they were on duty in the wheelhouse, in the chart room, did they not? A. I can't say anything about what they did on their watches.

Q. Well, what did you see with your own eyes when you were on the bridge deck? Didn't you see other [673] officers smoking? A. No.

Q. How about the seamen? Don't you know that they smoked while on this vessel?

(The interpreter speaks to the witness.)

Q. I said, that you know that they smoked while on this vessel. A. I know that they smoked, some of them.

Q. Where did they smoke? A. They were smoking aft in their smoking room.

Q. There was a smoking room in the poop, you mean? A. Yes.

Q. Was there a smoking room for the officers in the midship housing? A. Yes.

Q. And did the lookout smoke while he was on watch forward? A. No.

Q. What about the fellow that was standing at the wheel? A. No.

Nils Valen—For Petitioner—Cross

Q. Now, your ship made about 16½ knots, did it not? A. Yes.

Q. On the night of the fire you had a port breeze, did you not? A. Yes, a little on the port.

[674] Q. So anything thrown over the port side of your ship, by the very nature of things, would be carried aft and over to starboard, isn't that so? A. That is pretty hard to tell.

Q. Well, a breeze blowing from the port necessarily carries anything to starboard, doesn't it? A. Yes.

Q. And as you were going 16½ knots ahead, anything thrown over on the port side if going to be taken aft, isn't that so? A. Yes, it ought to, it should.

Q. Now, a little after 11 o'clock you were on the starboard wing of the bridge, you tell us. I am speaking now of 11 o'clock at night on January 18th. A. Yes.

Q. And you suddenly heard a dull boom, is that it? A. Yes.

Q. It sounded like a minor explosion? A. It didn't feel like anything.

Q. Oh, I don't mean it shook the vessel but you heard a boom like that, is that it? A. I didn't get that last.

Q. You heard a sound like a boom? A. I heard a bump sound.

[675] Q. What? A. Bump.

Q. A bump sound? A. Yes.

Q. And you were at the starboard and you looked aft, did you? A. Yes.

Q. And at that time you couldn't see flames from the starboard side, could you? A. I saw a small flame.

Q. And then from what you saw you knew it was on the portside of your ship? A. Yes.

Q. And so you went over on the port side of your ship, did you not? A. Yes.

Q. And then you went down, was it the sun deck you told us? A. Yes.

Nils Valen—For Petitioner—Cross

Q. And the sun deck, is that level with your upper bridge? A. At the same height as the lower bridge deck.

Q. And then you could look right down on top of the stow of naphthalene? A. I couldn't see directly down.

Q. Perhaps I don't understand the situation. Why not?

(Witness indicates on photograph.)

A. If I am standing right out there I can't see [676] directly down. I am looking at an angle.

Mr. Pyne: Pointing to the after end of the deck marked "S. D." on Petitioners' Exhibit R.

The Court: No, he was standing on the deck marked "S. D." and he was pointing to the after end of the ship.

Mr. Pyne: Pointing to the after end of the deck, that is where he pointed out.

The Court: That isn't as I understood him.

Q. Were you standing on this deck marked "S. D."? A. Yes.

Q. And you were standing at the after end of this deck? A. Where I was standing exactly I am not certain.

[677] Q. Well, in any event, the stow of naphthalene was right in front of you, wasn't it? A. It was several feet aft, towards the naphthalene.

Q. Yes, I know it was. You told us that the stow started about three feet aft of the bottom of the steps, and the steps may have been a slant that added another two or three feet, but from the after end of that sun deck there is only about six feet or so to the stow of naphthalene?

Mr. Pyne: I object to that. That is not what the witness said. He said that after deck is on a level with the lower bridge.

Mr. Longley: That has nothing to do with my question.

Mr. Pyne: And the witness has also said the boat deck and below the boat deck is the main deck.

Mr. Longley: I know that, but it has nothing to do with my question.

Mr. Pyne: Yes, it has everything to do with your question, because your question indicates to me something different from what the witness said.

The Court: It seems to me there was only one ladder in your question, Mr. Longley.

[678] Mr. Longley: I was dealing with the stow of naphthalene, your Honor.

Mr. Stonebridge: Your Honor, I think the witness may have been confused. When Mr. Longley says directly down, the witness thinks that is straight down.

The Court: I think that is so. Directly he interprets as vertically.

Q. As you stood where you did stand on the sun deck you could see the stow of naphthalene down below, couldn't you? A. Yes.

Q. Then did I understand you to say that you went below to the boat deck? A. No.

Mr. Longley: I may have mistaken that. Now may I have your drawing, Mr. Pyne?

(Mr. Pyne hands exhibit to counsel.)

Q. From the position where you were on the sun deck, as you looked aft at your stow of naphthalene, that is what you were seeing was it not? I am laying before you Petitioner's Exhibit P (indicating). A. This drawing here is made in order to elucidate what I saw from No. 4 hatch and not from the sun deck.

Q. Well, in any event, that is what you saw when you looked down on the top of the stow from the sun deck, isn't that true? [679] A. I saw a flame and smoke.

Q. And you saw that flame and smoke at the top of the stow of napthalene about where you have marked that in red?

The Court: About where he has marked it in red.

Mr. Longley: About where he has marked it in red. That is not where I marked it, but he has marked it. A. Yes.

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[680] Q. Mr. Valen, just before the recess you may recall I was interrogating what you saw when you looked down from the sun deck and you told us that you saw flames at the top of the stew of naphthalene? A. Yes.

Q. And I asked you and you told that where you saw the flames was approximately the position marked in red on this Petitioner's Exhibit T? A. Yes.

Q. The position to which you have referred I have marked in Exhibit T with the word "fire" with an arrow pointing to that area. As you stood there——

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Q. Now as you stood there at the after end of the sun deck all you could see was that fire on the top of the stow with black smoke, isn't that true? A. It was all that I observed at that time.

Q. Now how big an area, approximately, did this fire cover at that time? A. I can't answer that.

Q. I appreciate you can't give it to us in [681] inches but was there an area two or three feet across or was it just a few inches across? A. It is impossible to say how much it was because I only saw a little flame and then I ran back again immediately.

Q. And it was about in the position you marked on Exhibit T, I think you told us, approximately midway between the bulwarks and the edge of this stow, three feet inboard — I should say outboard from the hatch coaming? A. Yes, it is about at the place.

Q. And I think you said it was somewhat forward than midway of the No. 4 hatch, in a fore and aft direction? A. Yes, a little forward aft than the middle of the hatch.

Q. And then you ran to tell the master of the fire? A. Yes.

Q. And you found him in the passageway? A. Yes.

Q. And then you went back to the bridge and gave the wheelsman the orders to turn the wheel to port? A. Yes.

Q. What was the purpose of that maneuver? A. In order that we could get the wind in a [682] littie on the starboard, in order that we could get the wind in abrast on the starboard side.

Q. So that the flames would be carried toward the outside of the ship to port? A. Yes.

Q. Then you had a fairly strong wind from port, did you? A. No.

Q. Then what was the purpose of turning the ship at all if it was merely a light wind? A. It was in order to get the wind in from the starboard side.

Q. Whatever wind was there. A. Yes.

Q. Then having turned the ship, already having given the information to the master, you went aft to No. 4, did you? A. Yes, when the captain had taken over the command I went down.

Q. You went down on the starboard side to go aft? A. I went down on the port side.

Q. And then you got up on the No. 4 hatch? A. Yes.

Q. As you stood on No. 4 hatch, the stow of naphthalene was a foot or two higher than the top of the hatchway, was it not? A. About two feet.

Q. And as you looked toward the stow the first [683] thing you saw was still the flames and the smoke coming up from the top of the stow at the position you had seen when you were on the sun deck, isn't that so? A. Yes, I saw flame and smoke.

Q. Now prior to the time when you heard the sound that called your attention to something aft, when was the last time that you had seen the stow of naphthalene on the port side? A. I saw both forward and aft when I was walking up and back, to and from, on the bridge.

Q. When did you last look aft at the port stow of the naphthalene before you knew there was a fire? A. I cannot say. It couldn't be long.

Q. When you looked aft, you were looking primarily to see if there was any ship coming astern, weren't you? A. When I am crossing the bridge like that my eyes are wandering everywhere.

Q. Let's see. Ten-thirty or so it is dark, isn't it? A. Yes.

Q. Was this a moonlight night or was it a dark night? A. I can't answer.

Q. You don't remember, you mean? A. I don't remember.

Q. In any event, it was so dark you couldn't [684] see any smoke before there was any flame, isn't that true? A. In many places on the deck I would have seen the smoke anyhow.

Q. But you wouldn't have seen something from this area, would you? A. I can't say for sure but I believe I would have.

Q. In any event, having done what you have mentioned, you went aft and you picked up the hose after the engineers had given you pressure, isn't that true? A. Yes.

Q. And then you planned to jump up on top of the stow of naphthalene and use the water from the hose on the area of flame which you had already seen at the point marked "fire" on Exhibit T? A. Yes, I wanted to try to extinguish the fire.

Q. And then you found you couldn't get up on top of the stow because the flame was working toward you, isn't that correct? A. Yes, I could get up.

Q. Why didn't you? A. Because it was burning out from the side of the stow.

Q. Now you are referring, I take it, to this point that you have marked in red on the side of the stow on Exhibit T? A. Yes.

Mr. Longley: Now let us see how I will mark [685] that. How do you want me to mark that, Mr. Pyne?

Mr. Pyne: Anyway you want is all right with me.

Mr. Longley: Well, I will call this "fire(2)" (marking).

Q. Now do I understand that that was the first time you saw any fire at that point which I have marked "fire (2)"? A. Yes, I didn't see that before I got down on No. 4 hatch.

Q. And there was no fire coming between the first tier and the second tier? A. There was no fire between the first and second tier.

Q. But you saw fire or was it just smoke between the second tier and the third tier? A. That was fire.

Q. And smoke, too? A. At that time there was smoke all over.

Q. At that time there was no fire between that aperture, between the second tier and the third tier and the top of the stow? A. It wasn't fire above. There was no fire on the uppermost bags.

Q. No fire on what?

[686] (Record read.)

Q. Now on that drawing—by the way, you made that drawing yourself, did you not? A. Yes.

Mr. Longley: Referring to Exhibit T.

Q. These oblongs in this drawing are designed to represent bags of naphthalene, are they not? A. Yes.

Q. And at the corners where the bags come together I see you have left a space? A. It isn't supposed to be an open space, and it doesn't mean that.

Q. In fact, in your drawing you have left little spaces at the corners where four bags came together, haven't you? A. Yes, but that is only to point out the corners.

[687] Q. Do you know just how inflammable this cargo was? A. No.

Q. You don't know that these burlap bags impregnated with naphthalene burn very quickly? A. No.

Q. I perhaps misunderstood you, but is it your view of what you saw that you thought that a fire had started out toward the center of the stow two tiers down, and then worked its way to the point where you say you saw it next to the passageway outboard of No. 4 hatch? A. I never said anything like it.

Q. I am asking you now. A. I have no opinion in regard to it. I only saw the flame there. I saw it was burning there.

Q. In answer to Mr. Pyne's question you commented that you gave your testimony before a body, or an investigating body, at Oslo? A. That is right.

Q. At that time you said nothing whatever, did you, about seeing any fire between the second and third tiers that you now mention? A. Yes, I did.

Q. You did?

Mr. Longley: Let us have his testimony. I better have the Norwegian, because I have the English.

[688] Well, I tell you, instead of looking for it I will go on——

Mr. Pyne: I have it here. We will have it in a minute.

Mr. Longley: Well, it speaks for itself, Mr. Pyne.

Mr. Pyne: Here it is (handing to counsel).

Nils Valen—For Petitioner—Cross

Q. Will you look through this transcript of your testimony at Oslo in Norwegian and let us have what you mean (handing to witness).

Mr. Longley: It is my impression this is what he was talking about (indicating).

The Interpreter: Yes, that is right.

Mr. Longley: The witness points to this paragraph in Norwegian, and this is an agreed translation, is it not, Mr. Pyne?

Mr. Pyne: Yes, that is right.

Mr. Longley: The paragraph to which the witness points reads as follows, at page 5 of my copy:

"It was my impression that it was not actually burning at the top but in the middle of the pile of naphthalene bags on the port side of hatch No. 4. The ship had been listed to port, so naturally it burned towards the ship's side, but I also had [689] the impression it burned toward myself where I stood on hatch No. 4, trying to extinguish."

Is that a fair statement?

The Interpreter: Yes.

Q. Is that what you had in mind? A. Yes. Well, ——

Q. Is there anything else in here that you know of that deals with this? A. (Witness indicates.)

The Interpreter: "I didn't direct the hose towards the top but about towards the middle of the naphthalene pile."

Mr. Longley: Yes, I see that. That is all, thank you.

Mr. Abberley: No questions.

Nils Valen—For Petitioner—Re-direct

Re-direct examination by Mr. Pyne:

Q. Mr. Valen, on your direct examination you told us that your living quarters, your cabin, was in the midship house on the main deck. Is that correct? A. Yes.

Q. Where did you take your meals? A. In the officers' messroom on the main deck.

Q. And how did you get back and forth between the main deck, your quarters, and the navigation bridge? [690] A. I had to go up the ladder from the main deck to the boat deck, from the boat deck to the lower bridge, and the lower bridge to the bridge.

Q. Then did you go back and forth over that route to get to the navigation bridge every time you went on watch and to leave it? A. Yes.

Q. And did that take you over the boat deck and the lower bridge where the passengers' quarters were located? A. Yes.

Q. You were asked whether you examined the naphthalene stow during the course of the voyage? I ask you did you see it, did you see the naphthalene stowage during the voyage? A. I saw it when I had a watch on the bridge, and I saw it when I went to and from the bridge.

Q. How did its appearance to you look on those occasions, from its appearance when the vessel left Rotterdam? A. It was all right.

Q. Was there any difference in the appearance? A. No.

Q. You have been asked about markings on Petitioners' Exhibit T, this diagram you prepared, and you stated something with respect to the corners of the bags. Were there any openings at the corners of the bags or any [690a] where else, on top or sides? A. No.

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Deposition of Jan P. Muller

[692] • • • Jan P. Muller. His deposition was taken here in New York, your Honor, on November 3, 1954.

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"Q. Mr. Muller, where is your permanent residence? A. Bad Pyrmont, Germany.

[693] "Q. You are temporarily in the United States, are you, Mr. Muller? A. That's right.

"Q. You are here in the United States on business? A. That's right.

"Q. Are you engaged in the tobacco business? A. Yes.

"Q. Do you expect to leave the City of New York in the near future? A. Oh, yes.

"Q. When do you expect to leave? A. Tonight.

"Q. And where are you going? A. I am going to North Carolina.

"Q. Back to North Carolina? A. Yes.

"Q. You came up here from North Carolina at the request made to you by this office through another attorney in North Carolina, for the purpose of giving your testimony here? A. That's right.

"Q. Now, in July 1952 were you on board the Steamship Black Gull on a voyage between Europe and the United States, on which a fire occurred on that [694] vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board her? A. Oh, just as a passenger.

"Q. Now, do you recall what stateroom or living room or quarters you occupied in the vessel? A. You mean the number?

"Q. The number of—— A. No.

"Q. Do you know where its location was? A. Oh, yes, it was—I don't know how to describe it. When you look out of the porthole you could see the front part of the ship.

It must have been right under the captain's bridge.

"Q. Was there a ticket issued to you for that trip? A. Yes.

"Q. Can you describe the ticket in any way? What kind or type it was? A. Well, it was a big sheet of paper just like that (indicating), written on both sides.

"Q. I show you this piece of paper which has been [695] marked Petitioner's Exhibit 3 for Indent. under date of August 24, 1954."

And here, if I may digress, your Honor, to state that that was the same form that was marked on the Leeson deposition and now in evidence as an exhibit here.

(Mr. Pyne continues reading:)

"Is that the piece of paper that you just identified? A. Yes.

"Q. And to the best of your recollection how does that form or piece of paper compare with the ticket which was issued to you? A. Well, I think it's the same. I mean that paper looked just like this one.

"Q. Now, while you were aboard that vessel, and prior to the time that the fire occurred, did you see or receive any request or suggestion or instructions in connection with smoking? A. Yes.

"Q. Now, what type of data or matter was it that you saw or received? A. Well, I remember a sign that was in my cabin, and which says something about smoking.

[696] "Q. Now where in your cabin was the sign? A. I believe it was right on the wall over the table, a small table.

"Q. Can you recall what the content—or what was said on the sign, the substance? A. It said in the sense of 'Don't throw cigarettes or butts or burning cigarettes away, or overboard.'"

That is all of the direct, your Honor.

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Deposition of Harold Farstad

[697] * * * Deposition taken at Antwerp, on August 4, 1955, of Harold Farstad. He was the steward on the Black Gull * * * direct examination:

"Q. Mr. Farstad, where do you reside? A. In Antwerp.

"Q. You are a permanent resident here of Antwerp? A. I live here permanently.

"Q. And you and your family live here together? A. Yes.

"Q. Were you formerly a member of the crew of the vessel called Black Gull? A. Yes, I was steward.

"Q. When approximately as best you can remember by month and year did you first join the Black Gull? A. On the 4th of October, 1950.

"Q. And you joined her at that time as steward? A. Yes.

"Q. When did you leave the vessel? A. After the vessel had been on fire.

"Q. When as nearly as you can remember was the fire? A. On the 18th of July 1952.

"Q. And the vessel was at sea at that time? A. Yes, about 8 hours away from New York.

[698] "Q. Before you joined the Black Gull did you serve on any other Black Diamond vessel? A. No.

"Q. How many total years about in every capacity on any and all vessels did you go to sea? A. About 12 to 13 years.

"Q. And was that entirely in the steward departments? A. Yes always.

"Q. After you left the Black Gull did you serve on any other Black Diamond vessel and if so on what vessel? A. I went straight on board the Black Falcon from the Black Gull.

"Q. And how long approximately did you serve on the Black Falcon? A. About 18 to 19 months.

"Q. Since that time, since you left the Black Falcon have you gone to sea? A. No.

"Q. Are you at the present time in any way connected with or employed by Skibs Jolund of Oslo or Sigurd Herlofsen & Co., Oslo? A. I have no connections with them.

"Q. What is your present occupation? [699] A. I keep a cafe.

"Q. Do you recall from what port the Black Gull sailed, what port she left on the voyage on which the fire occurred when you mentioned? A. The last port was Rotterdam.

"Q. As steward on that vessel, what were your duties? A. I had to do with the look-out for the provisions, I had to do with the passengers and anything connected with the restaurant.

"Q. Do you recall how many passengers there were on the Black Gull on that voyage? A. As far as I remember we were full up, 10 passengers.

"Q. Do you remember the name or names of any of the passengers? A. I can't say for certain, but I remember a couple, an American couple, he was American and she was Belgian, I believe Mr. and Mrs. Leeson.

"Q. Mr. and Mrs. Leeson? A. Yes, Mr. and Mrs. Leeson.

"Q. Do you know where they reside at the present time? A. I cannot say, but I think they live in Antwerp.

[700] "Q. Do you know whether or not the passenger or passengers had any ticket or tickets? A. Every one of them.

"Q. Did you have anything to do or did you do yourself anything about or with the passengers' tickets? A. It was I who collected the tickets on arrival.

"Q. Can you tell us whether or not there was a place or a part on the ticket and on all of them for the passengers' signature? A. Yes on all the tickets the passengers had to sign.

"Q. Can you tell us whether or not each and every one of the passengers did or did not sign the tickets? A. All tickets had to be signed before I sent them in to the master.

Deposition of Harold Farstad

"Q. Were all the tickets signed? A. There were two tickets which were not signed and I had to get them signed by Mr. and Mrs. Leeson before I handed them to the Master. There was only one ticket for the two of them and they both had to sign on the one ticket.

"Q. In answer to a previous question, you said something about tickets on arrival. Will you tell us what you meant by tickets on arrival. On arrival where? [701] A. Before arrival means on arrival either in Europe or in the first port of America. It would mean Rotterdam going this way, New York the other.

"Q. You have spoken of collecting tickets from the passengers. Did you on this voyage collect from each and every passenger a ticket? A. All of them.

Q. Did you collect them before the date of the fire? A. Yes, before the fire.

"Q. Do you remember when or how long before the fire or how long after they came on board you collected the tickets? A. It would probably be on the day after we left Rotterdam.

"Q. What did you do with the tickets after you collected them? A. When I had collected them all I gave them upstairs to the Master of the ship.

"Q. If I understand your answers correctly you collected all the tickets for all of the passengers, is that right? A. Yes.

"Q. If I understand you correctly, when you first picked up the tickets they were all signed except one [702] ticket which covered two passengers; is that correct? A. No, one more ticket. There were two tickets: one for one person, one for two persons.

"Q. What did you do, if anything, in connection with those tickets which were not signed when you first picked them up? A. I asked the persons in question to sign on the tickets.

Deposition of Harold Farstad

"Q. Then is this the situation that when you delivered all of the tickets to the Master, all of the passengers had signed their ticket or tickets? A. Yes.

"Q. Are you familiar with the condition of the passengers' state rooms and the arrangements, furniture and what was in them? A. Yes.

"Q. In the passengers' staterooms was there any sign or signs or notice of any kind and if so what were they? A. We had two notices in each cabin. There was one that it was not allowed for passengers to smoke on deck and one stating that they were not allowed to throw cigarette and through the portholes.

"Q. Was there anything stated as to whether or not [703] the cigar or cigarette ends should be thrown or should not be thrown overboard or anything to that effect? A. It was stated that it was not allowed to throw overboard cigarette ends, cigar ends or other burning articles.

"Q. Do you from your own memory recall the exact wording of either of those signs which you say were in the passengers' cabins? A. Not quite word by word.

"Q. So what you have given us is your best recollection of the substance of at least some of the statements on the signs? A. Yes.

"Q. Elsewhere on the Black Gull, that is outside or apart from the passengers' cabins, were there any other sign or signs on the vessel and if so where were they and what did they say? A. In all the alleyways there was a notice, No Smoking. In front of the gangway when you came on the ship there was a notice No Smoking. On all the masthouses there were also notices that read No Smoking."

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[704] "Q. You have mentioned that you collected one ticket which you caused to be signed by two passengers. Do you remember the name or names of those two passengers? A. Mr. and Mrs. Leeson on the one ticket."

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"Q. Mr. Farstad, in the steward's department on the Black Gull on this trip, were there any stewardesses (women)? A. Yes, two.

"Q. Do you remember their names? A. No, I cannot remember.

"Q. What were their duties, what work did they do? A. They were cleaning the passengers' cabins, the saloon, the chief officer's cabin, the Captain's cabin and the chief engineer's cabin.

"Q. In the steward department on this vessel on this voyage was there any cook or cooks? A. We had one chief cook, one second cook and one galley boy.

"Q. You remember their names, perhaps? [705] A. The second cook was Asbjorn Jensen.

"Q. Do you remember the name of the other cook? A. I cannot remember the other cook's name because it was only his second voyage.

"Q. Do you remember the galley boy's name? A. No.

"Q. In addition to those five already mentioned, the two stewardesses, the two cooks and the galley boy, in addition to them were there any other in the crew in the steward's department? A. We had one girl for the Officers, one for the Petty Officers and one mess boy aft for the crew.

"Q. If my recollection is right, this names three more besides the five. A. There were three more."

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[706] GUSTAVE OLSON, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Olson, you are chief engineer of vessels? A. Yes.

Q. Do you hold any license? A. Yes.

Q. What license do you hold and how long have you held it? A. I have had third class since 1936.

Q. Is that a Norwegian engineer's license? A. Yes.

Q. How long have you been going to sea in total number of years? A. About 30 years.

Q. What vessel are you now serving on? [707] A. The Black Hawk.

Q. You were formerly chief engineer of the Black Gull? A. Yes.

Q. When did you join the Black Gull as chief engineer? A. I was sent down to Lanskrooner to supervise the building.

Q. And from the time the vessel was built down to the time of the fire were you chief engineer of the vessel? A. Yes.

Q. And before going on the Black Gull did you serve on any other vessel which was in the Black Diamond Steamship Corporation business or trade? A. No.

Q. Since you left the Black Gull have you continued on vessels in the Black Diamond Steamship Corporation service? A. Yes.

Q. On the evening of July 18, 1952, on the Black Gull did you go to the engine room of that vessel? A. Yes.

Q. What time did you go to the engine room? A. At 20 o'clock.

Q. That is 8 o'clock p.m.? A. Yes.

[708] Q. Did you remain there? A. Yes.

Q. Who else was in the engine room during that time from 8 o'clock on; who was the officer on watch? A. It was my assistant motorman.

Q. Who was actually the engineer officer on watch from 8 to midnight? A. I.

Q. On the voyage out of Rotterdam were the engines during the voyage at any time before July 18th stopped? A. Yes, we had three stops on the 14th.

Q. Do you know when, about what time they were topped and for how long? A. It was from 1320 to 1350, I think it was a little past 17 and a little past 19.

Q. For how long on those occasions? A. The first one was about half an hour: the second was about five minutes and the third about eight minutes.

Q. What was the reason for those three stops? A. We had fuel oil valves on engine No. 7 which did not work satisfactorily.

Q. What did you do about it? A. We changed them.

Q. How many cylinders did the Black Gull's engines have? A. Nine.

[709] Q. When you say you changed the valve, was it one valve or more than one valve changed? A. There were two valves on each cylinder.

Q. Well, I am speaking of the number that were changed, how many were changed? A. Two.

Q. Are spare valves or were spare valves carried on the Black Gull? A. Yes.

Q. Is it usual on the vessels on which you serve for them always to carry spare valves? A. Yes.

Q. Will you tell us as to the work of changing and the reason for changing a valve—whether it is a major repair item or a minor repair item? A. It is small work and we shifted them on the top of the cylinders were smoking.

Q. Except for that valve trouble on one occasion on July 14th, was there any other trouble or difficulty with the engines or any of the equipment in the engine room? A. No.

Q. Now, what was the condition of the engines and all of the equipment and appurtenances in the engine room on the Black Gull on this voyage? [710] A. Everything was in good condition.

Q. Will you tell us whether or not on the Black Gull on this voyage out of Rotterdam you saw any sign or signs anywhere on the vessel relating to smoking?

(The interpreter speaks with the witness.)

The Interpreter: Do you mean smoking of the engine or ordinary smoking?

Q. Smoking by crew or the passengers, that is what I am talking about, not smoking of the engines. A. Yes, I saw them smoking indoors.

Q. Now, I am asking you

Mr. Pyne: Would you mind reading the question?

Mr. Rein says there is some trouble with the translation. Maybe I had better ask the question again.

(Question read)

(The interpreter speaks with the witness.)

The Interpreter: I wonder whether you mean

Mr. Pyne: Let me ask the question again. Apparently there is trouble with the translation.

Q. On the Black Gull on this voyage was there any notice or any sign which said anything about smoking? A. Yes, we had painted in the engine room and [711] several places "Smoking Forbidden."

Q. Did you keep a log book in the engine room on the Black Gull? A. Yes, we had two log books, one for the ordinary handling of the engine and another one for maneuvering.

Q. What became of those books? A. They were lost during the fire.

Q. Now, you say you were in the engine room on the night of July 18, 1952. Will you tell us whether or not while you were in the engine room you received any order or orders? A. About 11 o'clock at night we suddenly received three orders.

Q. Well, what were those orders? A. Through the telephone we received orders to send water on deck on account of fire. Then it was "Stand By."

Mr. Pyne: "On the telegraph" he said.

The Interpreter: "On the telegraph," he said.

A. (Continuing) And at the same time the fire signal was given.

Q. Now, what were the engines of the Black Gull doing prior to those orders? [712] A. They had been running full speed since we changed our valves on the 14th.

Q. And after those orders were received in the engine room, what was done then? A. We immediately sent water on to the deck.

Q. How did you do that? A. By starting water on to the deck pump and the discharging pump which also could be used for water on deck.

Q. Now, did you receive any other order or orders and, if so, what? A. When they rang "Stand By," we merely answered that, and soon thereupon they rang "Slow Speed."

Q. Did you comply with the slow speed order? A. Yes.

Q. Were there any other or further orders, and, if so, what? A. A couple of minutes after we received the first order, we also received an order both from the bridge and also from the deck to put more force on the water.

Q. Before you got that order for more force on the water, what was the force of the water? A. We had a gauge there that showed 4 kilograms and I tested that by a trial valve, test valve.

[713] Q. Well, was that 4 kilograms you mentioned, is it or is it not full pressure? A. Yes.

Q. Now, how soon after you gave that pressure on that water on the deck did you get an order or request for more pressure or more pressure? A. About two minutes.

Q. And what did you do then? A. I started the ballast pump which also could be used for water on deck.

Q. Now, did you receive any order or request with respect to the vessel's tanks, whether ballast tanks or fuel tanks? A. I got orders from the bridge to pump out starboard cargo oil tank No. 1.

Mr. Pyne: I did not hear that.

(Answer read.)

Q. Any other order? A. And to trim the oil from starboard to port bottom tank No. 4.

Q. Were those orders complied with? A. Yes, immediately.

Q. You have told us that engines were put on slow ahead? A. Yes.

[714] Q. Were there any other or further orders for changes in engine speed? A. Yes, it was dead slow and stop.

Q. Could you recall or do you remember the sequence of any of those orders, how often they came or how many changes? A. No.

Q. Let me ask you, Mr. Olson, with respect to electrical equipment or electrical wires, was there any electrical wiring or electrical equipment anywhere aft of the midship-house on the Black Gull? A. Yes, there were electric wiring in cables from the cable of the engine room aft running underneath the shelter deck.

Q. Running where? A. Underneath the shelter deck.

[715] Q. Well, then, what part of the shelter deck; where on the vessel? A. On the port side.

Q. When you use the term "shelter deck," is that the same as what is called the tweendecks? A. It is the same as you here call it the weather deck.

Q. Where with respect to the main deck where the cargo was stowed were these wires that you speak of? A. That

is underneath the deck on which the naphthalene was stowed.

Q. On which side of the vessel, port or starboard? A. Port side.

Q. Will you proceed and tell us what conditions developed, what happened in the engine room on this right, after you were receiving the orders for changes in speed that you have mentioned? A. When we had been running for about an hour's time, one of the steering engines stopped.

Q. Did you do anything about that? A. Yes, we started the other one. The steering engine has two aggregates, and we started the other. The steering engine has two pumps and two motors. One had stopped and we started the other, and the same was running for about fifteen minutes when this one also [716] stopped. It started to get so much smoke in the engine room that it was difficult to see, and it felt just like tear gas.

Mr. Longley: I did not understand when all this occurred. After the fire?

Mr. Pyne: I beg your pardon?

Mr. Longley: When did this first steering engine break down, after the fire started?

Mr. Pyne: I think he said an hour or an hour and a quarter after the fire started.

Mr. Longley: Thank you.

Mr. Pyne: I will ask it in any event.

Q. When did you say that the first steering engine stopped—when with respect to the time of the first fire signal? A. About an hour afterwards.

Q. Do you know what caused the stoppage of that steering engine? A. I think that the cables which passed underneath the deck where the fire was, were burned up.

Q. Where did those cables pass, underneath what deck, or what part of what deck? A. If I could have the plan of the ship.

The Court: Was the steering engine operated [717] by electricity?

The Witness (in English): Yes, sir.

Mr. Pyne: Did your Honor want to ask the witness a question or questions?

The Court: I did, and got the answer.

Mr. Pyne: I did not hear it.

The Court: I asked him whether the steering engine was operated by electricity and he immediately answered yes.

Q. You have asked for the plan, so I show you Libelants' Exhibit 16 (handing to witness). A. Here was the table in the engine room, and the cables went up from that table underneath the shelter deck. I place them at about the middle of the deck from the hatch to the ship's side. And all the way aft to the motors for the steering engine, which are located at the lower floor in the poop.

Mr. Pyne: At the place where the witness has marked a cross.

The Witness: Here is the rudder (indicating).

Q. With a line drawn in pencil down to the rudder, and a line over the top of that pencil to make a T-shape indication? A. Yes.

Q. You have pointed out on that vessel a place [718] which has been stated to be about halfway between the side of the ship and the hatch. Which side of the ship is that on? A. The port side.

The Court: Was there a separate cable to each of the motors in the steering machine?

The Witness: Yes.

Q. You have mentioned, Mr. Olson, that when or after you started the second steering engine that the second engine also stopped? A. Yes.

Q. About how long was it between the starting and the stopping of that engine? A. About a quarter of an hour.

Q. You have mentioned that smoke came into the engine room which was like tear gas? A. Yes.

Q. Was anything done in the engine room or by the engine room force at that time? A. Do you mean as to the smoke?

Q. What did you do, if anything, about the smoke? A. We couldn't do anything. It was coming from the shaft alley.

Q. May I ask whether after the fire alrm was first sounded anybody else came to the engine room besides [719] those you have already mentioned as being there during the watch? A. Yes, the second engineer was called down.

Q. Did the smoke get bad in the engine room? Describe it. A. The smoke became so bad down there that it was difficult to see and difficult to breathe, so I asked the second engineer to get the motor and take the motor man along and go aft on deck; and I also asked him to advise the captain that we had to leave the engine room as it was practically impossible to breathe down there.

Q. Did you after that or at any time receive any further order from the bridge? A. At that time the engines were stopped, but they rang three bills that they were finished with the engine.

Q. Who rang that finished with the engines; where did that signal come from? A. It was rung on the telegraph.

Q. What occurred then; what happened then? A. Then my assistants and myself went up from the engine room. But before we went up we stopped the transfer pump which was pumping oil from starboard to port, from the bottom tank.

[719a] Q. When you left the engine room then the engines were stopped, and also the pumps that were pumping oil to the engines: is that correct? A. Yes.

Gustave Olson—For Petitioner—Cross

[720] Q. What was the condition of the pumps or water for the fire hoses or water on deck when you left the engine room? A. There were three pumps giving water to the deck at the time that we went up and we let them go and we let also the pump pumping water from the ballast tank run—go.

(The interpreter speaks with the witness.)

A. (Continuing) From the cargo oil tank No. 1.

Q. When you say you let these water pumps go, what do you mean by that? Were they continuing pumping water or not? A. They continued pumping water.

Q. About how long was it after you got the first fire alarm signal until you abandoned or left the engine room? A. About an hour and a half.

Q. What did you and the other engine room crew then do? A. We continued helping with extinguishing the fire on the deck.

Q. And after you got to the deck, how long, about, did you continue helping fighting the fire on deck before you left the ship entirely in the lifeboat? [721] A. About two hours.

* * *

Cross-examination by Mr. Longley:

Q. Chief, up to the time of the fire there was no trouble whatever with the steering engines, was there? A. No.

Q. The steering engines were on the poop or in the poop? A. Yes.

Q. And the power reached the steering engines by way of the electrical conduit which you have described as running through the shelter deck on the port side, isn't that so? A. Yes.

Q. When you left the engine room, Chief, you have told us that you left your pumps still operating. A. Yes.

Q. Hadn't you stopped your auxiliaries then when you left the engine room? A. No, two auxiliary motors were running.

Q. And what about your electric lights in the engine room, were they operating when you left? A. Yes, there was full light in the engine room when we left.

[722] Q. And you left because you found that the engine room was unlivable because of smoke, is that correct? A. Yes.

Q. And that smoke was reaching the engine room by way of the shaft alley? A. Yes, and also from the skylight.

Q. Before you left the engine room, did you see the third man Valen? A. No.

Q. There is testimony here that Valen came down the escape hatch to the shaft alley and then through that to the engine room after the fire. You did not see him come into the engine room? A. We were working on the starboard side of the engine room and Valen could have come on the port side without us seeing him.

Q. Chief, it is true, is it not, that sparks do come from the funnel of a diesel-powered ship at times? A. Yes, that's right.

Q. You had no spark arresters over your funnel, did you? A. No, I haven't seen that on any ship.

Q. You knew, did you not, Chief, that when you [723] received the order to pump out one of the tanks to lift the ship after the fire broke out, that that was to permit the burning flaming naphthalene to flow off of the deck? A. Yes.

* * * *

Cross-examination by Mr. Stonebridge:

Q. Chief, you, in answer to a question put by Mr. Pyne, testified that there were signs prohibiting smoking in the engine room.

Did you see any other signs, the same or similar, anywhere else on the vessel? A. Yes, there were on the deck painted at various places on the deck.

Q. Do you recall where they were painted? A. Yes, they were painted here (indicating), in various places immediately when we got up the gangway, on both sides here (indicating), and also on the bulkhead after part forecastle head; also fore and aft on the masthouses, on the forward part of the midshiphouse and also at the after part, and at the forward and after part of the after masthouse, and [724] at the forward part of the poop.

Q. Chief, looking at the ship's plans before you, could you tell us where on deck you had hose connections or stand pipes to take your firehoses? A. We had a connection here (indicating) at the break of the forecastle head, and one abreast of the foremost masthouse and another abreast of the forward part of the second masthouse, and one at the break of the forward part of the midshiphouse, one at the break of the after part of the midshiphouse, one at the after part of No. 4 hatch and another at the forward part of No. 5 hatch, and one at the break of the poop—all on the starboard side.

There are more. Then two on the boat deck, one on each side, and one on each side at the lower bridge.

Q. Thank you, Chief. Now, one more question: How many men were there in the engine room department on the Black Gull? A. Fifteen.

Q. You mentioned approximately five who were in the engine room during the fire. Do you know what the others were doing? A. There were four in the engine room during the [725] fire.

Q. Including yourself? A. Yes.

Q. Where were the other members of the engine room department? A. I was in the engine room; therefore, I can't exactly tell where they were but I think they were in their rooms.

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The Court: Are there any hose connections on the port side of the ship?

The Witness: Yes, on the boat deck and lower bridge.

The Court: But not on the main deck?

The Witness: No.

Mr. Stonebridge: I did not quite get that question. I believe the witness has marked on the main deck the location.

The Court: But all on the starboard side.

Mr. Stonebridge: That is correct.

Cross-examination by Mr. Longley:

Q. Chief, where on the starboard side in relation to the stow of naphthalene were these outlets or valves? A. The connections were at the side of the ship [726] and around same had been built a latticework of dunnage in order that it could be gotten to.

Q. How far above the deck were the valves—10 inches? A. About a foot.

Q. And the stow of naphthalene was about 6 feet high, was it not? A. Yes.

Q. And the stow of naphthalene was against what has been called here a fence inboard of the bulwarks? A. Yes.

Q. And these valves were between the bulwarks and this fence holding the naphthalene? A. Yes.

Q. Well, how would anyone get to these valves to make a connection with the hoses? A. It was good room for a man to get down to the latticework, to the valve, and connect them up.

Q. You have made a little drawing here from which I gather that in the way of the valves the fence holding the stow was built inboard. A. Yes.

Q. Then to connect up the hose a man would have to walk across the stow of naphthalene, drop down into this hole or opening around the valve and then [727] connect up

his hose; is that correct? A. As regards the after deck, in order to connect it they had to go down through these openings in the stow, but there was also room on the boat deck and the lower bridge to connect up there without going down.

Q. Chief, after you left the engine room, having been driven out by the smoke, you returned, did you not? A. Yes. When I got up on the starboard boat deck the chief officer told me that some of the men were missing and we agreed that we were going to go aft through the shaft alley and the escape exit and see if we could get to them.

Q. That is because you understood the missing men were in the poop? A. Yes, we couldn't see them on the deck so we thought—we couldn't see them on the deck or in the lifeboat, therefore we thought they might be in the engine room shaft alley or poop, and that is why we decided to go there.

Q. Did you talk with the third officer? A. No.

Q. The Belgian messboy was one of the missing men, was he not? A. Yes.

Q. And did somebody return to the engine room [728] with you? A. Yes, the chief officer.

Q. And you two made every effort to get into the shaft alley, did you not? A. We not only tried to get into the shaft ailey but we got through the shaft alley to the emergency exit after part but there we had to turn around on account of the smoke. We had no——

Q. Smoke mask? A. ——smoke mask.

[729] Q. Was the smoke pouring down the emergency exit into the shaft alley? A. Yes, both through the ventilator that is placed there and also through the poop itself.

* * *

[730] *Re-direct examination by Mr. Pyne:*

Q. Mr. Longley if I understood him correctly referred to you as the third officer. Who was it that went with you through the shaft ailey to try to find the missing man?

The Interpreter: The chief officer.

Mr. Pyne: Maybe I misunderstood him. He answers chief engineer.

The Interpreter: Yes, that is right.

Q. Chief, these pictures that have been offered here in evidence as Petitioner's Exhibits O, P, Q, R and S, I do not find in that any outlets for a hose connection on Exhibit O. There was none in that deck, in that area, was there? A. That is because this picture has been taken [731] from this angle, and it does not get into the picture, because this corner is this corner (indicating).

Q. I understand that this is a picture looking forward on the port side. Are you telling us that the hose connection is to the right as you look at this picture? A. Yes.

Q. Now I show you this picture which is Petitioner's Exhibit Q. That is looking aft. I do not see any hose connection there. Can you tell us where it was in that picture? A. That is taken from this forward corner looking aft. You cannot see the valve from that direction. The valve is located here (indicating).

Q. You have got it marked with a cross. Well, I don't quite understand why one cannot see it. Do you mean it is around the curve here? A. Here is the smokestack and the pipe is coming up through the smokestack on both sides of same.

Q. Looking at Petitioner's Exhibit Q, so I may understand it and the Judge, too, the hose connection you refer to is around the curve of this building here? A. This corner here is this corner (indicating).

Q. I see. A. It is impossible to see the valve from that direction.

[732] Q. Then on Petitioner's Exhibit S, I see a valve here. Is that one of those to which you referred? A. Yes, that is the one.

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Harry Kristiansen—For Petitioner—Direct

HARRY KRISTIANSEN, called as a witness on behalf of the petitioner, was duly sworn through the interpreter, and testified through the interpreter as follows:

Direct examination By Mr. Pyne:

Q. By whom are you now employed, Mr. Kristiansen? A. Sigurd Herlofsen & Co.

Q. Are you a member of the crew of any vessel now? A. I am the chief officer of the Black Tern.

Q. You formerly were a member of the crew of the Black Gull? A. Yes.

Q. You were second officer on the Black Gull on the voyage on which the fire occurred? A. Yes.

Q. For how many years total have you been going to sea? A. About twelve years.

Q. Do you hold any license? [733] A. I got the chief officer's certificate. I also hold a master's certificate.

Q. Mr. Kristiansen, we are having trouble back here in hearing, so speak up a little bit. How long have you held a master's license? A. Half a year.

Q. And how long have you held a mate's license? A. Since June 1950.

Q. How long have you been on vessels, all of them, which were in the Black Diamond Steamship Corporation trade? A. Since August, 1950.

Q. When did you first join the Black Gull? A. August, 1950.

[734] Q. And did you remain on the Black Gull until the time of the fire? A. Yes.

Q. And throughout that whole time were you her second officer? A. I commenced there as third officer, became second officer, was chief officer for one voyage and went back to second officer.

Q. When, if you can remember, did you first become second officer? A. April 14, 1951.

Q. And you remained second officer right down to the time of the fire? A. Except for that one voyage when Lyngaas was brought to the hospital at Rotterdam and I went out as chief officer.

Q. Can you tell us, Mr. Kristiansen, whether or not on vessels other than the Black Diamond—you have made trips—on other than the Black Gull you have made trips to the United States when the vessels carried naphthalene, crude naphthalene? A. Black Gull, Black Heron, Black Tern, Black Hawk.

Q. In other words, including the Black Gull, you have made voyages from Europe to the United States [735] on four vessels which carried naphthalene? A. Yes.

Q. In total, can you tell us about how many voyages you made between Europe and the United States on vessels carrying naphthalene? A. About 28.

Q. Did you see the manner and way in which the naphthalene was stowed on the deck of the Black Gull when that vessel left Rotterdam July 10, 1952, for the United States? A. Yes.

Q. Did you see the stowage of the naphthalene on the deck during the voyage on which the fire occurred? A. Yes.

Q. How often and under what circumstances did you see the stowage of the naphthalene on that voyage? A. I saw it all the time when I had watch on the bridge, and otherwise when I was off watch, when I had something to do on the deck.

Q. What watch did you stand while the vessel was under way as deck officer? A. From 12 to 4 watch.

Q. That would be 12 to 4 a. m. and 12 to 4 p. m.? A. Yes.

[736] Q. Now, with respect to the bags of naphthalene on the deck, both forward and aft of the masthouse on this voyage on which the fire occurred, will you describe the appearance as you saw it of the top and the sides of that stow? A. As a compact stowage.

Q. When you say "compact stowage," will you tell us further what you mean by that? A. The bags are stowed closely together.

Q. Were there or were there not any openings or crevices between the bags at any place, the top or sides? A. No.

Q. How did the method or manner in which the naphthalene stowed on the Black Gull on this voyage on which the fire occurred compare with the manner and method of stowage of the naphthalene on these other voyages which you have mentioned when vessels carried naphthalene on which you served? A. Exactly the same stowage.

Q. Now, where were you on the night of July 18, 1952, when you first heard or learned that there was any trouble or fire? A. In my bunk.

[737] Q. And where was your bunk on the vessel? A. The foremost room on the starboard side on the deck.

Q. On that boat will you tell us whether or not anywhere out on the decks or open parts of the vessel there were any sign or signs involving or concerning smoking? A. Yes.

Q. Tell us where they were, and if you want to make use of the vessel's plan, do so. A. Two on the after part of the forecastle head, one at the forward and after bulkheads of both masthouses on the forward deck, one at the forward part of the midship building, one on each side at the entrance to the gangway, one at the after part of the midship building, one at the forward and one at the after bulkhead of the masthouse on the after deck, and at least one at the forward bulkhead of the poop. That's all.

Q. What was the wording of those signs or any of them? A. "No Smoking."

Q. Describe the signs as to sizes of the letters. A. The letters were about 5 or 6 inches high.

[738] Q. Did you yourself, during the voyage on which the fire occurred, ever smoke at any time during the voyage while you were out on deck or on the wings of the bridge? A. Not out on deck.

Q. How about the wings of the bridge? A. No.

Q. Did you, during that voyage, ever see anybody else smoking out on deck anywhere on the vessel in the open? A. No.

Q. Did you ever go into or see the inside of any of the passenger cabins? A. No, I have nothing there to do.

Q. Now, you stated that you were in your bunk on the night of July 18, 1952. A. Yes.

Q. What caused you to leave your bunk? A. One of the stewardesses came and woke me up and said there was fire on deck.

Q. What did you do then? A. I turned out immediately.

Q. Where did you go? A. Out on deck.

Q. Whereabouts on deck and what did you do? [739] A. I went out on the boat deck, got ahold of a hose and connected same up and sprayed water from the boat deck down on the fire.

Q. Where was the fire as you saw it? A. About in the middle of the stowage, at about the middle of No. 4 hatch.

Q. How long did you continue to play water from that place? A. About 10 minutes.

Q. And where did you go then? What did you do? A. Then I went out on the deck and tried to get out from the door on the port side, while at the same time I tried to lock the door there which was standing open.

Mr. Pyne: I did not get that.
(Answer read)

Q. Port side where, and what door are you talking about? A. I am talking about the port door in the midship building. That is the after door.

Q. Did you close the door? A. I couldn't get to it on account of the fire.

Q. Now, where—if you will, please, tell us where you went and what you did. [740] A. I went all through the rooms on the port side to see if there were anybody there.

Mr. Pyne: To see what, Captain?

The Interpreter: ". . . to see if there were anybody there."

Q. Well, proceed and tell us what happened. A. Then I went back on the boat deck and probably continued to spray water. At that time there was already fire on the after end of the port lifeboat. Then the captain said, "Try to get the starboard lifeboat"—and then the captain ordered the starboard lifeboat to be put into the water in order that same also should not catch fire.

Q. Did you have anything to do with the launching of that starboard lifeboat? A. Yes, I had the command of the starboard lifeboat.

Q. Will you tell us what was done and how it was launched? A. The lifeboat was made ready, lowered down to the level of the rail of the boat deck, and the passengers came out. First all the ladies were put into the lifeboat and the remainder of the passengers and sufficient crew to maneuver the boat. Thereupon [741] it was lowered down.

Q. Were you in the boat yourself as it was lowered? A. Yes.

Q. When you say the boat was made ready for lowering, will you describe or state how it was made ready; what was done? A. All the covers on the boat were taken up, the plugs were put in, and it was then lowered down to the level with the rail in order to get the passengers in.

Q. You have referred to plugs. Will you tell us what you mean by "plugs"? A. In the forward and after part of the lifeboat there are draining holes and at the side of each hole there is a chain with two plugs. The plugs are made from cork with bolts running through them and then each plug has got a metal sheave with through-going bolt.

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[742] Q. You state that there is a chain at each of these two drainage holes with two plugs; is that correct? A. Yes.

Q. What is the purpose or use or reason for two plugs for each hole? A. One for reserve.

Q. Can you tell us whether or not to your personal knowledge and observation each of those holes was plugged or closed before the lifeboat was lowered? Were they plugged? A. Yes.

Q. There has been some testimony here from a passenger to the effect that when the boat was in the water plugs were not in place. What do you say as to that? A. I say the plugs were in place.

Q. After the boat was in the water did any plugs come out of place that had been put in? A. No.

Q. About how long was it, Mr. Kristiansen, after you first heard of the fire until the time that the lifeboat was launched? A. About half an hour.

Q. Will you tell us whether or not there was any confusion or any hurry in connection with the launching of that boat and the putting of the passengers and the crew into it? A. Everything went quite normally, quiet and in good order.

[743] Q. When the lifeboat reached the water when it was first lowered will you describe what occurred then, what happened? A. When the lifeboat got into the water and had been cleared from the tackle, it was hauled forward.

Q. How was it hauled forward? A. By the crew on the deck.

Q. Where forward was it hauled to? A. To about the forward part. To the forward part, forward of the midships building.

Q. Besides yourself, how many others of the crew were in that lifeboat when it was first launched as you have stated? A. Ten men.

Q. Why and for what reason was the lifeboat hauled to the forward position that you have mentioned? A. It was hauled forward as it was the intention to have the boat lying there forward of where the fire was.

Q. For what purpose was that intended, to have the boat there? A. It was a safer place to have the lifeboat there than to have same hanging in the davits.

Q. Incidentally, what was the total capacity in persons of that lifeboat? A. Fifty.

[744] Q. And what was its condition? A. In a completely good condition.

Q. How about its equipment, will you describe that? A. There was the ordinary lifeboat equipment such as water, bread, medicines, signalling equipment, eleven oars, a mop and sail.

Q. Did the boat have a rudder? A. Yes.

Q. Was the rudder put outboard or in place at any time? A. No.

Q. Why not? A. It was not necessary.

Q. Did the passengers when they entered that lifeboat all of them have life jackets on? A. Yes, everybody, both passengers and crew.

Q. While the lifeboat was up alongside the Black Gull, forward on the Black Gull, will you tell us what occurred there? A. The ship had still headway, and the lifeboat which was lying on the starboard side from where both wind and sea came in, was shipping water. While at the same time water was also running through the scuppers on deck down into the boat. Then I decided to cut the painter.

Q. When you say painter, do you mean the line between the lifeboat and the deck of the Black Gull? [745] A. Yes.

Q. Will you proceed and tell us what happened after you cut that line or painter? A. We tried to get the lifeboat clear of the ship's side, but we drifted too fast aft towards No. 4, and I understood that we would not be able to get the lifeboat out before we got abreast of No. 4, there-

fore I brdered all of those in the lifeboat into the water on the lee side of the lifeboat, to lie on the lee side of the lifeboat hanging on to the lifeline on the lifeboat, which everybody did, and after we had passed No. 4, all of them got back into the lifeboat again.

Q. About how long would you say that the persons who were in the lifeboat were in the water before they got back into the lifeboat? A. From the order that was given to jump overboard until they got back again I should say two or three minutes, but it took a longer time than that before the last man got back into the lifeboat again.

Q. Is there any way of estimating the time before the last person got in? A. If you add about five minutes, it would be good time.

Q. Where in the lifeboat were these members of [746] the crew that you have mentioned and what were they doing? A. They were spread in the boat. We had three or four oars out—three being handled by the crew and one by a passenger.

Q. How many oar locks or places to use oars were there along the sides, each side of the lifeboat? A. Five on each side, and one for steering.

Q. How many oars did the crew have out? A. We had four oars out in all. It was not necessary to use more as we only kept the lifeboat in place.

Q. When you say you kept the lifeboat in place, what do you mean by that? A. In the vicinity near the Black Gull.

[747] Q. Was it necessary to do any rowing? A. No.

Q. And did you take any other person or persons into the lifeboat after that, and if so, who and when? A. All in all, I picked up four men of the crew which had jumped overboard. One had jumped overboard from the poop, and three jumped overboard from forward just before the others left the ship.

Q. How about Mr. Valen? Did he reach the lifeboat? A. He came into the lifeboat before the painter was cut.

Q. What was his condition when he entered and how did he get in? A. He was burned on the hands and face. I think—I believe he was lowered down.

Q. It has been testified here, by one passenger at least, that the crew in the lifeboat did not seem to be able to row. What do you say as to that? A. The crew which was in the boat could row. One of them was an a.b., one was an ordinary seaman, who the year afterwards was in the lifeboat that won the lifeboat race here in New York, the next year.

Q. Well, were the crew able and capable of carrying out any order or orders you gave them? A. Yes, of course.

[748] Q. And did they carry out all orders you gave them? A. Yes, of course.

Q. Now eventually did the remainder of the crew of the Black Gull enter the lifeboat? A. Yes.

Q. All of them? A. Yes. But at that time the motor lifeboat from the Gripsholm had already arrived and was moored to the stern of our lifeboat.

Q. Now you have mentioned that the lifeboat shipped water while it was made fast or had the line out to the Black Gull—shipped it, if I understood you correctly, over the side? A. Yes.

Q. What was the cause or how did that come about? A. The ship was steering some headway. The lifeboat was lying moored along the ship's side. When the wind and sea strikes the ship's side it sprays over into the lifeboat.

Q. You have also stated some water came into the lifeboat from the scuppers on the deck of the Black Gull? A. Yes, then they are using a lot of hoses on deck you get water there and it has got to come out again.

Q. How much water at most, when all of the water that came in was in, however it got in—how much water [749] was in the lifeboat? A. When I cut the painter I should say between one and one and a half foot.

Harry Kristiansen—For Petitioner—Direct

Q. And where do you measure that one and one and a half foot? A. It is three feet from the bottom of the boat to the——

The Interpreter: I haven't used that word for a long time——

A. (Continuing)—to the board that you sit on in the lifeboat.

Mr. Pyne: To the thwarts or the seat.
The Interpreter: Seat.
Mr. Pyne: The cross thwarts.
The Interpreter: The cross thwarts, yes.

Q. And when you measure the one to one and a half foot, to what part of the lifeboat itself are you making the measure—the sides, the center or where? A. In the middle of the boat.

Q. And about how high do you say the cross pieces or cross seats were above that center part of the boat? A. About three feet.

Q. There has been some testimony here from a passenger to the effect that there was a heavy piece of wood across the middle of that lifeboat. Will you [750] tell us whether or not there was any piece of wood there, and if so, describe it and what happened to it? A. That was the mast.

Q. And what was done with the mast? A. We threw it overboard in order to give more space so that they could move around in in the boat.

Q. Was the mast needed in the boat? A. It might be necessary but it wasn't necessary at that time because we were lying right in the steamship lane between New York and Europe.

Q. What was the condition of the sea at this time and while the boat was in the water? Was it smooth or rough or what was it? A. A little swell, some choppy sea.

Harry Kristiansen—For Petitioner—Direct

Q. There has been some testimony by one passenger that there was a piece of iron across the middle of the boat. What do you say with respect to that? A. I don't know anything else but that on the side which is towards the ship's side we have a sort of wooden glider which is—which is shoed with steel, fastened on the inside of the rail (indicating), and the other one is fastened underneath the keel of the boat.

On the inside of it there is a handle which is so connected that when you pull on it the hold on [751] the keel is released and then you can pull up the whole thing and drop it overboard.

Q. What is the purpose or use of that equipment? A. The purpose of it is to protect the lifeboat when lying alongside of the ship, while at the same time if the ship should have a list it will help in sliding the boat when being lowered down.

Q. In other words, it acts as a protection between the lifeboat and the side of a ship when the boat is being lowered or towed alongside? A. Yes.

Q. Now was there any such piece of equipment detached and thrown overboard from this lifeboat? A. After we got clear of the ship and everybody had gotten on board again, they were loosened and thrown away.

Q. Were they of any use after that? Could they have been of any use after that? A. No.

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[752] Q. You mentioned, Mr. Kristiansen, that the Gripsholm's lifeboat came. Was there anybody transferred from the Black Gull-lifeboat to the Gripsholm lifeboat? A. Yes.

Q. Who or about how many persons went from the one lifeboat to the other? A. I can't say exactly how many, but about half of them.

Harry Kristiansen—For Petitioner—Cross

Q. Did you personally see every one of those persons when they were going from one boat to the other? A. Yes, I assisted all of them from our boat into the other.

Q. During that transfer from one boat to the other, was there any person who fell? A. No, not during the shifting.

Q. Well, did you see any person fall, or did you see any person injured at any time in one or the other of the lifeboats, or going from one to the other? A. No.

[753] Q. After the transfer of those persons from one lifeboat to the other, what then occurred? A. After everybody had gotten into the lifeboat and the master was the last that came, then they towed us from the Black Gull over to the Gripsholm.

Q. That is, the Gripsholm's motor lifeboat towed the Black Gull's lifeboat? A. Yes.

Q. Do you know at what o'clock time approximately that occurred? A. Exactly the time I cannot remember, but it must have been about 3:30.

Mr. Pyne: That is all.

By the Court:

Q. How many people left the Black Gull by the lifeboat? A. Forty-six.

Q. How many of them were in the Black Gull's lifeboat before the transfer? A. Twenty-four.

Q. What was the capacity of the Black Gull's lifeboat? A. Fifty.

Cross-examination by Mr. Abberley:

Q. Mr. Kristiansen, you were generally familiar with both the lifeboats of the Black Gull, were you not? A. Of course.

Q. What was the port boat constructed of? A. Wood.

[754] Q. What was the capacity of the port boat? A. Fifty.

Q. Did the port boat have power? A. Yes.

Q. What size engines did the port boat have? A. I don't know.

Q. How fast could the engine which the port boat had drive the lifeboat when in the water? A. Five or six miles, I should say.

Q. What was the speed of the Black Gull just prior to the time when the port boat caught on fire; how fast would you say she was going through the water? A. I cannot say.

Q. Will you make an estimate, your best estimate? A. She had headway, but I don't know how much.

Q. Would you say that the Black Gull was going through the water faster than the lifeboat might have been able to go through the water had it been launched? A. I can't tell.

Q. How many men were required to launch the port lifeboat? A. Six men.

Q. How long would it take to launch the port lifeboat? A. From the time you start to get the boat ready until you got it in the water it will take four [755] to five minutes.

Q. How many men are required to handle the port lifeboat when it is in the water? A. There is nothing special as to how many men.

Q. Did the port lifeboat have an assigned crew? A. Yes.

Q. Who was the officer in charge of the port lifeboat? A. The chief officer.

Q. When you were on the boat deck during the occasions which you previously mentioned fighting the fire, did you see the first officer on the boat deck in the vicinity of the port lifeboat? A. I saw him at the after part of the boat deck with the hose.

Q. Was the port lifeboat on fire at that time? A. Not immediately but soon thereafter; it caught fire pretty soon.

Q. Could the first officer have given the order to lower the port lifeboat? A. He could, but then they would have lost crew in order to fight the fire.

Harry Kristiansen—For Petitioner—Cross

Q. Do I have it then correctly that you had a crew of forty men on the Black Gull? A. Everybody figured, yes.

Q. Do I also understand correctly that it would [756] take six men to launch the port lifeboat? A. Yes.

Q. Do I also understand that it would require the orders of the captain to launch the port lifeboat? A. No. You got to have the master's orders to put a lifeboat in the water.

Mr. Kristiansen, you were the officer in charge of the starboard boat, is that correct? A. Yes.

Q. When had you last been in the starboard boat for purposes of holding a lifeboat drill? A. When I can't say. I need a logbook.

Mr. Abberley: Is the logbook available?

Mr. Pyne: That is it (handing).

Q. I show you a logbook (handing witness). See if you can find an entry as to when you, as the officer in charge of this lifeboat, last conducted a lifeboat drill. (A. Witness examines.)

Q. There is a great deal in the log. Perhaps I can suggest a date to help you find the place. If I suggested the date of April 19, 1952, as a time when the Black Gull held a lifeboat drill, would you agree with that if the logbook shows that? A. (in English) Yes. (Through interpreter:) Yes.

[757] Q. Which lifeboat was used at that time? A. Port.

Q. Going back from that date, can you find when the starboard boat was last used for a lifeboat drill? A. On April 19th, port lifeboat was put in the water. Crew standing by starboard lifeboat. Every man checked.

Q. What period of time does this log cover, Mr. Kristiansen, you are now looking at? What is the date of the first entry in the log? A. March 5th, 1952.

Harry Kristiansen—For Petitioner—Cross

Q. Do you find an entry in this log where you, as the officer in charge of the boat, of the starboard lifeboat, conducted a lifeboat drill with the boat launched and put in the water? A. No.

Q. Do you have any recollection as to when you might have conducted a lifeboat drill using the starboard lifeboat? A. I can remember but not when, and in regard to that I need the logbook before this one.

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[758] Q. Mr. Kristiansen, you referred to ten men as being members of the crew who manned the starboard lifeboat when she was launched. Were these ten men the regularly assigned crew members to the starboard lifeboat? A. No, there were some from the port boat.

Q. Did you have a regularly assigned crew for the starboard lifeboat? A. Yes.

Q. How many men were assigned to man the starboard lifeboat? A. Half of the crew.

Q. How many men were assigned to—when I used the word "man," by this I mean handle and row and steer and maneuver the starboard lifeboat. Certainly half the crew doesn't do that.

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A. To maneuver and steer the boat, I do myself. In regard to rowing the boat, I got to have four men.

Q. When the lifeboat was lowered in the water, was there any water in the bilges of the lifeboat? A. There are no bilges there.

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Q. Was there any water in the bottom of the life- [759] boat? A. No.

Q. When the starboard lifeboat entered the water was the bow somewhat higher than the stern? A. The after part of the boat, the stern, took the water first.

Harry Kristiansen—For Petitioner—Cross

Q. How soon after the stern was in the water was the bow allowed to enter the water? A. Immediately.

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Q. How soon after the boat was in the water was the tackle which lowered the boat in the water free? A. Immediately.

Q. You have described a painter or bowline attached to the bow of the starboard lifeboat and let up and forward. Was this bowline on the lifeboat at the time she was lowered into the water? A. It was led forward before the boat was in the water.

Q. So that it was attached to the boat when the boat was loaded and put into the water? A. Yes.

[760] Q. Did this line prevent the lifeboat from moving free of the ship? A. It is there for the purpose to hold the lifeboat when the tackles are released.

Q. You described the condition of the wind and seas and you described the wind blowing over the starboard side of the lifeboat and the water being blown or splashed over the starboard rail of the lifeboat, and you have said that the Black Gull had way, and I understood you to say that you were not rowing at the time. I ask you, would the effect of the waves and wind coming from the starboard side, plus the forward motion of the Black Gull secured to this rowboat, have the effect of dragging the rowboat alongside of the Black Gull? A. Yes, of course.

[761] Q. Now isn't it true that the boat did close in on the side of the Black Gull at the place where there was a fire on the Black Gull? A. That was after the line was cut, yes.

Q. Was it the fact that the side of the ship was so hot it forced the passengers to leave the lifeboat and jump into the water? A. No.

Q. Why did the passengers leave the lifeboat and get into the water? A. On account of the heat from the ship's deck.

Q. So that it was the heat that forced the passengers from the lifeboat into the water? A. Yes.

Q. Were you wearing a watch at the time? A. No, I am sorry to say it was left in the room.

Q. Did all of the crew of the lifeboat get into the water? A. Everybody who was in the lifeboat got into the water.

Q. When for the first time did you start to row this lifeboat? A. I would say that we never rowed the lifeboat, we only kept it in place.

Q. How is it that one of the passengers was allowed to row the lifeboat? A. He took an oar, and I thought all right, let him keep that oar.

[762] Q. When did you first ship the rudder or cast the rudder, to the stern of the lifeboat? A. The rudder was never put on.

Q. Do I understand by this that there was no occasion when you were required to steer or maneuver the lifeboat? A. We had a steering oar.

Q. When was the steering oar used for the first time? A. When we rowed the lifeboat towards the bow of the Black Gull.

Q. How much time would you say had elapsed between the time the lifeboat first entered the water and the time you first started to steer or maneuver this lifeboat and row it; what was the interval of time? A. We maneuvered and steered about and kept the boat in place until we got orders from the forecastle to come up to the bow. It was probably a couple of hours.

Q. Where were you standing when the boat was lowered, Mr. Kristiansen? A. At the stern of the boat.

Q. How long was this boat? A. The boat is 26 feet 3½ inches long.

Q. Who put the forward bilge plug in the bottom of the boat? A. One of the men that took the board [763] of the boat off the lifeboat.

Q. Did he tell you he put the bilge plug in the forward bilge? A. I asked if the plugs were in before the boat was lowered, and I received the answer, yes.

Q. You mentioned before that at one time you had from a foot to a foot and a half in the bilges of the lifeboat.

Mr. Pyne: I beg your pardon, Mr. Abberley, there is no bilge in a lifeboat, as the witness already has said—in the bottom of the lifeboat.

Mr. Abberley: In the bottom of the lifeboat.

Q. Was there a pump in the lifeboat? A. Yes.

Q. Was the pump used? A. No, we bailed out, we used buckets.

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By Mr. Longley:

Q. When you learned of the fire, you immediately went to the after deck, did you not? A. I went to the boat deck.

Q. And from there where did you go? A. First we tried to extinguish the fire from the boat deck

Q. With a hose, you mean? A. Yes.

[764] Q. Was there a hose then connected to one of the valves of the boat deck? A. I think I myself was alone connecting it.

Q. Where were the hoses, that is, the fire hoses, kept on this vessel? A. In a box fastened to the engine room casing on the boat deck.

Q. Then, having use that hose, what did you do next? A. I handed the hose to another man and then I went down into the midships house alley.

Q. Did you sometime thereafter go on the after main deck? A. No.

Q. Then the nearest you ever came to the fire, then, was on the boat deck aft? A. Yes, the after part of the boat deck.

Q. And you played the hose on when you saw the flame in the naphthalene, on the port side, did you not? A. Yes.

Q. And that flame was about halfway across the stow from port to starboard, was it not?

Well, i did not put it very well. I will withdraw that question. The flames were about halfway on the top of the stow between the hatch coaming and the port side of the ship. A. Yes.

Q. And that is the only place you saw any flame, [765] was it not? A. To begin with, yes

Q. And then the flames extended over the top of the stow with great speed, did they not? A. I won't say very fast, but it spread.

Q. And there was a high flame and much black smoke; isn't that true? A. It was a flame. I can't say the height of it but it was very much smoke.

Q. When you first got there and saw the flame, approximately how large an area was it burning on the top of the stow? A. I can't say.

Q. How many hoses were playing on the fire when you got there? A. One was connected when I got there, two or three others were connected just afterwards.

Q. And these were all four fire houses connected up to the water system of the vessel? A. Yes.

Q. And that water was played on this fire under pressure from the fire hoses, was it not? A. Yes.

Q. And instead of the fire being extinguished it spread from the stow of naphthalene on the port deck; isn't that so? A. Yes.

Q. And then the fire spread the naphthalene on [766] the starboard side of the deck? A. Well, that was after the lifeboat had been put into the water.

Q. You mean you didn't see that, you didn't see it burning on the starboard side? A. Yes, from the lifeboat.

Q. And you saw molten naphthalene blazing and running down the ship's side, did you not? A. Yes, after the lifeboat was clear of the ship.

Harry Kristiansen—For Petitioner—Cross

Q. And from where you were in the lifeboat you saw the fire burn from aft forward and destroy the midship structure, did you not? A. Yes.

Q. And then the fire spread forward and consumed the naphthalene on the forward deck, both port and starboard, did it not? A. Yes.

Q. On this vessel there was a fire-detecting apparatus on the bridge, was there not? A. Yes.

Q. That apparatus consisted of little tubes up in the pilothouse which led down to the respective cargo compartments, isn't that so? A. Yes.

Q. And when a fire was burning in a compartment, [767] smoke would show itself in these glass tubes, isn't that true? A. Yes.

Q. And it also, if there was smoke, rang a bell on the bridge, didn't it? A. No.

Q. No bell. You had to look and visually see the smoke in your system? A. Yes.

Q. During one period of this fire there were explosions on board the vessel, were there not? A. During the time we were in the lifeboat we saw one explosion but I do not know where it came from.

Q. Was it in the after end of the ship? A. It was around near midships.

Q. The steering engines of this vessel operated in good condition until long after the fire, did they not? A. I don't know. I was in the lifeboat.

Q. Did you have anything whatever to do with the stowage of naphthalene on the deck of the Black Gull? A. I had to look after the stowage when I had cargo watch.

Q. During the course of loading, you mean? A. Yes.

Q. Did you go down on the decks and see how the naphthalene was stowed? A. During the loading I went always up and the deck and also into the holds.

[768] Q. How was the bottom tier of naphthalene stowed as to compactness on the after deck of the Black

Gull? A. It was stowed tightly thwartship with opening between every third bag in order that the water could drain off.

Q. During the course of the voyage between Rotterdam and the time of the fire, you encountered weather that caused your ship to roll and pitch, did you not? A. I don't remember. I got to look in the log for it.

Q. Well, do so. Do you have it there? A. No.

Mr. Longley: Do you have the logbook?

(Mr. Pyne hands to counsel, who hands to the witness.) (Witness examines.)

Q. I call your attention particularly to July 11th and July 17th. A. The 11th, fine weather.

Q. Didn't your vessel pitch and roll on that day, according to the entries in your logbook? A. No.

Q. Well, what about the 17th? A. (After examining) No.

Mr. Longley: Let me see those entries in [769] the logbook—the protest, Mr. Zisgen. Did I get the wrong dates?

Mr. Zisgen: Here is the 11th (handing).

Q. Well, I got the wrong dates. The 13th of July (handing). A. (Examining.)

Q. On that day your vessel pitched and you had spray over the decks and hatches, did you not? A. Some pitching with spray over deck and hatches.

Q. And on the 17th you had a force 6 wind, did you not? A. Yes.

Q. Is the force of your winds computed on the Beaufort scale? A. Yes.

Q. And on the 12th your vessel pitched with spray over the deck and hatches, isn't that true? A. (After examining) Yes.

Harry Kristiansen—For Petitioner—Cross

Q. When your vessel pitches and rolls in the ordinary weather which you have in the trans-Atlantic voyage, you know that your cargo moves, isn't that true? A. With good stowage, no.

Q. You mean Under deck? A. Under deck and over and on deck.

Q. What stops in this case the cargo of naphthalene on deck moving around as the vessel moved? A. The cargo is well stowed and besides that [770] it was lashed with nets.

Q. You spoke of the stowage of naphthalene on other Black Diamond vessels. A. Yes.

Q. On many of the voyages to which you referred there were very small numbers of bags of naphthalene on deck, isn't that so? A. The naphthalene cargoes on different vessels were smaller or larger.

Q. Depending on the cargo offered, you mean? A. I don't know anything about what is offered to us.

Q. There couldn't be much more cargo of naphthalene on deck than there was on the Black Gull, could there? A. The ships which have larger decks can, of course, carry larger loads.

Q. That is fair enough. However, as far as concerns the Black Gull, she had her decks covered with naphthalene, both forward and aft, isn't that so? A. Yes.

Q. As the naphthalene was stowed on the Black Gull it was exposed to the sun's rays throughout the voyage across the Atlantic, wasn't it? A. Yes, the day that we had sun.

Q. That is fair enough, too. And you know [771] that the naphthalene was stowed in jute bags? A. Yes.

Q. What did you know when this voyage commenced concerning the characteristics of naphthalene? A. What we call dangerous cargo.

Q. What was the danger as you understood it? A. That the cargo was inflammable.

Q. Did you receive any particular warning from anyone as to the care to be taken in connection with it? A. Not to smoke on deck.

Q. You did smoke when you were on watch on the bridge and in the chart room, did you not? A. Not on the bridge but in the chart room.

Q. What about the wheelhouse? A. Yes.

Q. And you saw other officers and members of the crew smoking in the wheelhouse and in the chartroom, did you not? A. No.

Q. I understood you to say that you didn't see anyone smoking out on deck? A. Yes.

Q. You didn't mix with the passenger, did you? A. No.

Q. And you weren't up on the decks where the passengers walked, were you, at any time? [772] A. Yes, off and on when I went on the bridge and from the bridge.

Q. You mean that you crossed the deck where the passengers walked in going up to the bridge? A. Yes.

Q. The electrical connections on this vessel were in order at all times, were they not, until after the fire? A. As far as I know, yes. I don't know all about it.

Q. You told us that some of the crew members jumped into the water after the fire? A. Yes.

Q. How many of them had jumped from the poop? A. One.

Q. Did you, after the fire broke out, at any time see the Belgian messboy? A. He was amidships immediately after the fire started. Then all hands were amidship.

The Court: I did not get that.

(Answer read.)

Q. And then did he go aft to fight the fire? A. I don't know.

Q. You didn't see him after that one time? A. No.

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Harry Kristiansen—For Petitioner—Cross
Deposition of Dr. W. N. E. Van Rossem

[773] By Mr. Abberley:

Q. Mr. Kristiansen, with respect to the number of people in the lifeboat at any one time, do I understand that you transferred people from your lifeboat to a lifeboat belonging to the Gripsholm? A. Yes.

Q. Just prior to the time the shift or transfer was made, how many people were in your lifeboat? A. Twenty-four.

Q. And where were the other people, the other members of the crew of the Black Gull? A. On the forecastle head.

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[775] Mr. Pyne: I would like to read, your Honor, from the deposition of Dr. W. N. E. Van Rossem. He was a witness examined by deposition at Rotterdam August 23, 1955, and he had been sworn by the U. S. Consul:

"Q. Doctor Van Rossem, where do you reside? A. At The Hague.

"Q. What is your occupation? A. I am a barrister and solicitor at Rotterdam.

"Q. Are you a member of any law firm? A. Yes, I am.

"Q. What firm and for how many years have you been a member? A. I have practiced since 1917 in Rotterdam, always in the same firm.

"Q. Has the name of that firm over that period of time been changed? A. When I came here in 1917 I was what we call a 'junior,' an assistant in the law office. The name of the firm where I was an assistant was first Van Raalte & Van Walsem, and then Jacobson, Nauta & Van Walsem. On the first of January 1924 I became a partner and then the firm was called Nauta, Van Walsem, Van Rossem & Offerhaus. There have been some changes [776] in the members of the firm and now it is called Van Walsem, Van Rossem, Loeff & De Groot.

Deposition of Dr. W. N. E. Van Rossem

Q. I notice you refer to the name Jacobson. Was there ever another firm of the name of Jacobson, Nauta, Van Walsem and Vlug? A. No, such a firm has never existed. The name Vlug has never been connected with the firm.

"Q. Was there ever a firm of that name? A. No, never.

"Q. Mr. A. C. W. Beerman has testified that there was a firm of Jacobson, Nauta, Van Walsem & Vlug. A. Then his memory must have left him.

"Q. Was Mr. Beerman ever connected in any way with your firm? A. Yes, from 1925 to 1930 he was an assistant in my firm, he was my assistant.

"Q. Was Mr. Beerman ever a partner or junior partner in your firm? A. No, never. He was an assistant in the time the firm was called Nauta, Van Walsem, Van Rossem & Offerhaus.

"Q. Are you admitted or licensed to practice in any Netherlands court or courts and, if so, what court or courts? [777] A. Of course I am. All Dutch barristers are qualified to appear before all courts in the Netherlands including the 'Hoge Raad,' what you call in America the Supreme Court, without any exception.

"Q. Are you now or in the past have you been a judge in the Netherlands of any court, and, if so, what court? A. Since 1923 till 1943 I was a deputy judge in the Cantonal Court at Rotterdam and in 1943 I became a deputy judge and I am still a deputy judge in the Court of First Instance at Rotterdam.

"Q. What has been your education both generally and also specifically with respect to law studies? A. I studied law at the University of Leyden and I took my degree in 1917.

"Q. What degree did you then receive? A. The degree of doctor of law.

"Q. Is that degree of a doctor of law the equivalent of the degree of a master of law? A. No, not quite the same. A master of law has only passed his final examination, but did not write a dissertation, nor did he put forward any theses, I put forward theses.

Q. Is a person who has received the degree of [778] a master of law authorized or entitled to use the title or prefix Dr. to his name? A. No, surely not.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, in maritime law.

"Q. Are you a member of any legal institutions, societies or associations? A. Yes, of course I am.

"Q. Would you name some of them? A. First of all I am since 1948 the chairman of the Rotterdam Bar and since 1953 I am the deputy chairman of the Netherlands Bar. Moreover, I am a member of some legal societies; the Netherlands Advocates Society, the Dutch Jurists Society.

"Q. Are you a member of what has been called here the C. M. I.? A. No.

"Q. Or the N. J. V.? A. Yes, that is what I meant by Dutch Jurists Society.

[779] "Q. Will you explain to us what is meant by Chairman of the Rotterdam Bar and Deputy Chairman of the Netherlands Bar? A. At the top of each Bar, e.g., the Rotterdam Bar, is a council of 7 members including the chairman, and their duty is to see to it that things run well and especially that the advocates don't do wrong things. They have authority to punish them.

"Q. If I understand you correctly, their duty is to discipline any member of the Bar who has done an improper act? A. Yes, that is correct.

"Q. Have you made any research or investigation of the question whether there is any law, rule or regulation in the Netherlands concerning the manner of loading, stowing and carrying of naphthalene on vessels? A. Yes, I have.

Deposition of Dr. W. N. E. Van Rossem

"Q. Is there in force now or has there been in the past in force in the Netherlands any such law, rule or regulation involving the loading, stowing or carriage of naphthalene? A. No, surely not.

"Q. Are there now in force, and were there in force [780] in June and July 1952, any general laws, rules or regulations in the Netherlands concerning loading, stowage and carrying of dangerous cargoes on vessels? A. Yes, sure.

"Q. Will you state for us please what those laws were, and identify them? A. I am referring to what we call the 'Schepenwet.' (pointing to Beerman Exhibit 2 for identification).

"Q. Will you tell us what part or portion, and identify them please, of that law refers to dangerous cargoes? A. On the strength of the Schepenwet the Crown has issued the Schepenbesluit. The Schepenbesluit in force in June 1952 was the Schepenbesluit issued the 26th of November 1932, Staatsblad 563.

"Q. I notice that you have yourself produced here and have among your papers a book to which you have just referred and which you are using and which down in the lower right hand corner has on its cover after the word Zwolle the year 1950. Is this book which I now show you the same as the book to which you have referred and which you have produced? A. Yes."

And I asked to have the book marked for [781] identification and it was produced and marked, your Honor.

"Q. Will you please identify what part or portion or section of this Van Rossem Exhibit 1 for identification covers the matter of dangerous cargoes, identifying it by section and also by pages of the book? A. As I told you the word naphthalene is never mentioned, but the only article which might be referred to is article 94 on page 146

and the following pages, and if naphthalene ought to be considered as a dangerous cargo it should be in section 4 of article 94."

We then produced, your Honor, and had marked the certified translation by what they call in Holland an official, or, rather, sworn translator of Section 94. It was then marked as Exhibit 2 for identification.

I will offer it in evidence now, your Honor.

Mr. Zisgen: Your Honor, that is the same translation which has already been received in evidence as Libelants' Exhibit 34-A.

Mr. Pyne: Then I don't need it.

Mr. Zisgen: You don't need another one.

Mr. Pyne: I will just mark this Libelants' Exhibit 34-A (marking).

[782] (Continuing to read:)

"Q. Subsequent to June and July 1952 was there any other law or decree adopted in connection with the matters we have been discussing, dangerous cargoes? A. This Schepenbesluit, I might call it a Royal Decree, has been changed into another one dated 31st December 1952, Government Gazette 679. This came into force on the 26th of January 1953.

"Q. I notice that you are referring to a book which bears on its cover in print in the lower right-hand corner after the word Zwolle the year 1954. Is that booklet the same as the book which has already been marked Beerman Exhibit 4 for identification? A. Yes."

(To Mr. Zisgen) Did you have that marked?

Mr. Zisgen: Beerman Exhibit 4 for identification, your Honor, was offered in evidence here as Libelants' Exhibit 37.

Mr. Pyne: (Continuing to read:)

"Q. Is there any place or portion of that booklet or any other matter in which it is stated when that law or decree came into force? A. Page 191 at the bottom, note 1."

Then we asked the interpreter for the record [783] to translate that note, your Honor, and he translated it thus:

"Fo the Netherlands: 26 January 1953 (Decree of 24 January 1953, Government Gazette 31)

"for the Netherlands Antilles: 1 July 1953 (Decree of 8 June 1953, Government Gazette 274). See also Notice to Shipping Nr 1/1952 hereinafter contained.

"Q. In your opinion as a matter of law, would or would not crude naphthalene come within the provisions of the law and decree which you have testified was in force in June and July 1952 concerning dangerous cargoes? A. I am not a chemist. The only thing I can say I could find is that perhaps according to the opinion of the chemists it might fall under sub-section 4.

"Q. If in the opinion of a chemist crude naphthalene came within the wording and provisions of that sub-section 4 would crude naphthalene then as a matter of law be required to be packed in any particular manner or way? A. You can read that for yourself, it should be packed in gas-tight packing.

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[787] "Q. Assuming for discussion without granting or admitting that crude naphthalene is a product included in the definitions in sub-section 4 of article 94, would it then be permissible as a matter of Netherlands law to carry crude naphthalene otherwise than in gas-tight packing? A. No, of course not.

[788] "Q. Making the same assumption for discussion, namely that crude naphthalene is a product included

in the definitions of sub-section 4 of article 94, would any government official or government employee have authority under Netherland law through rule or regulation or practice or otherwise to permit crude naphthalene to be carried otherwise than in gas-tight packing? A. No.

"Q. Again making the same assumption for discussion, assuming that crude naphthalene is a product not within the definitions of article 94, then would any government official or government employee under Netherland law have the right or authority or any legal right to make rules or regulations concerning naphthalene? A. No.

"Q. Can you and will you tell us and point out to us if there is any section or sub-division of art. 94 on which you base that last statement? A. Dutch Government authorities have no power to act with respect to naphthalene on their own accord without taking into consideration the regulations of art. 94.

[789] "Q. What particular part or portion of that article would be involved in the question as to whether or not a Government official or Government employee would have the right to make rules or regulations concerning naphthalene? A. This is mentioned in subsection 13 of Van Rossem Exhibit 1.

"Q. Will you give us the page? A. Page 151.

"Q. What does it provide at that section 13? A. It provides that the most common commodities meant in the present section shall be listed. I refer to 'meant in the present section.'"

[790] "Q. Is there any other section of that art. 94 which would bear on this question of the right or authority of any Government official or government employee to make rules or regulations concerning napthalene? A. Sub-section 11A.

"Q. That sub-section 11A would have what effect as a matter of Netherlands law in your opinion insofar as concerns articles or products with respect to which the officials or employees could make regulations? A. I refer again

to the words 'meant in this section', the last words of 11A.

"Q. Under Netherlands law as in existence in June and July 1952, was there any rule or regulation requiring products or goods referred to in art. 94 to be labeled or marked in any way? A. I don't think so, I think the first regulation about marking is later.

"Q. You say that you do not think so. Can you tell us definitely if in your opinion, under the law existing in June or July 1952, there was any such regulation concerning labeling or marking?"

Mr. Pyne: Mr. Van Rossem, the record shows, then consulted a book, and the question continued:

"Q. You are now referring to the 1954 edition [791] identical with Beerman Exhibit 4 (Libelants' Exhibit 37). My question has been limited thus far to the 1950 edition, copy of which we have marked Van Rossem Exhibit 1. A. I don't think so. That was my answer.

"Q. Now will you tell us whether or not at the present time there is any law, rule or regulation with respect to labeling or marking goods or products referred to in article 94? A. Yes. That is the Notice to Shipping No. 5-1952 of 19 November, 1952, Government Gazette 1953 No. 11, quoted on page 478 of the 1954 edition.

"Q. Of Beerman Exhibit 4, is that correct? A. Yes."

Mr. Pyne: I asked the interpreter to make an English translation of that notice, your Honor. It was marked Exhibit 3, the English translation of it, and I will offer that English translation in evidence. Do you want a copy of it, Mr. Longley?

Mr. Longley: I have it. This is something like a year after our voyage. I do not know what the significance of it is.

The Court: What light does it throw on it, Mr. Pyne?

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Mr. Pyne: It will definitely show as we take [792] it in later that this opinion expressed by Mr. Beerman, and which was a controversial matter, was based on this law in 1954 when it came into effect; and even further than that——

The Court: In view of that offer of proof, I will accept it.

Mr. Pyne: We will further expect to prove with this, your Honor, and further things, that that law to which Mr. Beerman referred never in fact was published, therefore never in fact adopted.

(Marked Petitioner's Exhibit U.)

Mr. Pyne (Continuing reading):

"Q. When did that particular regulation which you have identified and which has been marked Petitioner's Exhibit U come into force? A. It must have come into force a few days after the 19th of November 1952.

"Q. You previously referred to sub-section 13 of art. 94 of the decree in force in June and July 1952, which instructs the Minister to issue a book on Dangerous Cargoes. Had any such book been issued or published up to and including July 1952? A. No.

"Q. Has any such book been issued or published [793] up to the present time, either under that royal decree or any other? A. No.

"Q. Does the decree which you have testified came into force and effect in January 1953 contain a similar or identical provision as that of sub-section 13 of the decree in force in June and July 1952? A. Sub-section 15 of art. 99 at page 166 of Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Up to the present time has any such book been issued or published by the Minister under that decree? A. No.

"Q. Under Netherlands law is there any procedure required which must be followed to give legality or binding

force and effect to any such book or any portion of any such book?"

Mr. Zisgen: I object to that, your Honor, unless Mr. Pyne specifies the time about which he was inquiring—which he then did.

Mr. Pyne: The question was repeated right after that, your Honor, specifying the time.

(Continuing reading:)

"Q. Is there under Netherlands law in your opin- [794] ion any required procedure which should have been and was required to have been followed in June and July 1952 and also up to the present time, in order to give legality or binding force or effect to any such book or publication or any portion of any such book as referred to in section 13 of art. 94 or section 15 of art. 99? A. As we are living in a civilized country and a democratic country, not a single regulation issued by any Dutch Government official can be binding upon the people unless published. As regards acts and royal decrees this has been expressly laid down in the law. As regards ministerial decrees there is no such legal provision, because it has for a long time been maintained that a minister had no power to give a binding decree. This view has gradually changed, but it was then omitted to make a special law equal to the act on acts and royal decrees. That, however, a ministerial decree, like an act and a royal decree, must be published in order to be binding, we consider here as a matter of course and has moreover been stated by a decision of the Supreme Court of the 24th January 1936, published in the Jurisprudence of 1936 under No. 490.

"Q. Will you state for us whether or not as a matter of law in your opinion the same law to which you [795] have just referred applies to regulations of the Inspector General of Shipping or any sub-inspector? A. A fortiori.

"Q. You previously referred to sub-section 11 of art. 94. Is there any similar or the same provison in the decree

which you stated came into force in January 1953 and if so, will you identify that? A. No. 12, page 164 of Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Is that sub-section 12 of art. 99? A. Yes, it is.

"Q. Under that sub-section 12 of art. 99, the January 1953 decree, have any such regulations been issued and published, and if so, can you identify one or two as examples? A. You may find them at page 468 and following pages of Beerman Exhibit 4 (Libelants' Exhibit 37)."

Mr. Pyne: Has Beerman Exhibit 4 been marked in evidence?

Mr. Zisgen: Yes, it has, as Libelants' Exhibit 37; and I am waiting for the translation of Article 99, which will be 37-A.

Mr. Pyne: May I substitute Libelants' Exhibit 37 in that last answer, your Honor, in place of Beerman [796] Exhibit 4.

"Q. Do any of those published regulations refer to naphthalene by name? A. No.

"Q. As a matter of Netherlands law, rule or regulation, is the master or the owner or any carrier by vessel under any duty or obligation to notify any Government official, Government employee or Government office when dangerous goods are being or expected to be or have been loaded?

"I will add to that question whether there was any such duty or obligation at any time?

"A. No.

"Q. Is there any such obligation on any party? A. Yes, on the shipper.

"Q. In June and July 1952 can you point out the provision of the decree or law so requiring? A. No. 12 of the old Schepenbesluit, page 150, of art. 94."

Mr. Pyne: I believe that has already been marked, has it not, Mr. Zisgen, Libelants' Exhibit 34?

Mr. Zisgen: According to the deposition there was a translation of it marked as Van Rossem Exhibit 3. You just offered it in evidence a few moments ago as [797] Petitioner's Exhibit U.

Mr. Pyne: It is the same as Libelants' Exhibit 34, isn't it?

Mr. Zisgen: No, Petitioner's Exhiibt U. You just offered it.

Mr. Stonebridge: Your Honor, I object to the admission of that until such time as I am clear about the numbering of the exhibits. If this Petitioner's Exhibit U is the letter which was marked for identification—this is the letter that caused the trouble.

Mr. Zisgen: No, it is not.

The Court: The notice of shipping is U.

Mr. Stonebridge: Oh, it is not. Then the objection is withdrawn, your Honor.

Mr. Pyne: I will repeat that question, your Honor, and refer to the present marking of exhibits:

"Q. In June and July 1952 can you point out the provision of the decree or law so requiring? A. No. 12 of the old Schepenbesluit, page 150, of art. 94."

It has been marked previously here today, your Honor, Petitioner's Exhibit U.

The Court: I am not getting that. Didn't he say July 1952?

[798] Mr. Pyne: That is right, your Honor.

The Court: Then that which is called to my attention was not issued until November 19, 1952.

Mr. Pyne: I think what he is saying is that there was a similar provision in a prior statute. That is what he is stating. It is just repeated in this statute.

(Continuing reading:)

"Q. Under the January 1953 decree, can you tell us whether there is any such or similar provision? A. No. 13.

"Q. You now refer to No. 13 of art. 99 of Beerman Exhibit 4 (Libelants' Exhibit 37) page 166.

"Under Netherlands law, is there any provision which distinguishes or defines passenger vessels from cargo vessels? A. Yes. Passenger vessels are defined in art. 1 of the Schepenwet, 1954 edition page 19, Beerman Exhibit 4 (Libelants' Exhibit 37).

"Q. Please identify the similar provisions in the 1950 edition. A. Page 18 of Van Rossem Exhibit 1 for identification.

"Q. To what flag or flags of the vessels does this subsection to which you have last referred of these [799] two laws apply? A. The whole law does apply only to Dutch vessels and in consequence not to foreign vessels.

"Q. That of course is true then also of sections 94 and 99? A. Sure.

"Q. What is the definition or distinction under the law to which you have referred between a passenger and a cargo vessel, under Netherlands law? A. A passenger vessel has been defined at the pages I mentioned as every ship that by her owner is intended to carry more than 12 passengers or a ship that actually carries more than 12 passengers."

Mr. Pyne: Here we come, your Honor, to the part that was taken as testimony of Mr. Van Rossem, in rebuttal of that portion of Mr. Beerman's testimony and Exhibit 3.

Mr. Zisgen: It is the Exhibit 3 to which Mr. Pyne refers, which is the letter to which he and Mr. Stonebridge objected, and which your Honor ex-

cluded from evidence, so I object to the rest of this testimony. It has no bearing as long as the letter itself is not in evidence.

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[807] Mr. Pyne: Your Honor, we were referred yesterday in the testimony to Section 94 of one of the Dutch statutes. That was the statute in force at the time of this particular accident, and we also referred to Section 99 of a statute which came into force in January of 1953.

Section 94, in translation, was marked in evidence by Mr. Zisgen, and in his testimony a space was reserved as Libelants' Exhibit 37-A for the translation of Section 99, and if I may present that now, your Honor, that translation—it wasn't available to either of us when Mr. Zisgen was reading Dr. Beerman's testimony.

[808] Mr. Pyne: 37 was the Dutch, your Honor, and 37-A is the translation.

The Court: Section 99.

• • •

Mr. Stonebridge: Yes. (Reading.)

"Q. During your direct examination, if I recall correctly, you stated that Dutch law applies only to Dutch vessels. Are there any exceptions to that general statement? A. I meant that this Dutch law applies to Dutch vessels.

"Q. The Schepenbesluit that has been referred to in the course of your testimony? A. That is stated in art. 2 of the Schepenwet. I might refer you to art. 69 subsection 1. Here it is stated that the officials of the Shipping Inspection are entitled to detain a vessel of foreign nationality in certain cases mentioned in the article. Do you want a translation?

[809] "Q. Would the interpreter please translate on the record art. 69 subsection 1?"

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The translation follows:

"Apart from the provisions of art. 67 a Shipping Inspectorate official is empowered to detain a vessel of foreign nationality which does not in pursuance of articles 2 or 2b fall under the present act, and which by reason of the unsound condition of the hull, the gear or the equipment, or as a result of bad stowage endangers the persons on board.

"Q. So your earlier testimony is in effect a statement that generally speaking the Schepenbesluit does not apply to foreign vessels? A. Correct."

* * *

"Q. Are you a member of the Maritime Law Association of the Netherlands? A. No, I am not.

"Q. You agree, do you not, that the representative [810] of the Kingdom of the Netherlands signed the international convention for the unification of rules relating to bills of lading known as The Hague Rules? A. Yes.

"Q. I understand that the Kingdom never ratified that convention. Is that correct? A. That is correct.

"Q. Is it not a fact that in general the Maritime Law of the Netherlands is based upon the same principles as those embodied in The Hague Rules? A. It is.

"Q. Those principles are embodied, are they not, in Articles 468 and 480 of your Netherlands Maritime Code? A. Yes.

"Q. I show you a book which has been marked as Beerman Exhibit 1 for identification."

What is Beerman Exhibit 1 for identification, Mr. Zisgen?

Mr. Zisgen: It is now Libelants' Exhibit 33.

Mr. Longley: (Reading)

"Are you familiar with that book? A. Yes, I have seen it several times.

"Q. Do you agree that speaking generally it is a fair translation? [811] A. I never checked it.

"Q. Do you have any reason to doubt that it is a fair translation? A. No.

"Q. Do you agree that under the law of the Netherlands the parties to a contract for the carriage of goods by sea may lawfully provide that their contract may be governed by The Hague Rules in whole or in part? A. Yes.

"Q. And that is true, is it not, whether the contract is for the carriage of goods to the Netherlands, or from the Netherlands? A. They always may.

"Q. It is a fact, is it not, that under the Commercial Code of the Netherlands, the Maritime Law, the carrier is under an obligation to load and stow the goods properly and carefully? A. Yes.

"Q. And that is true of all goods which he accepts for carriage? A. Yes.

"Q. That obligation applies to goods carried on deck with the shipper's permission? A. Yes.

[812] "Q. And you agree, do you not, that the carrier may not by contract exempt himself from that obligation? A. He surely may not when the ship is outward bound.

"Q. And by outward bound do you mean bound from the Netherlands to a foreign port? A. I refer to article 517d.

"Q. As printed in Beerman Exhibit 1"—now Libelants' Exhibit 33—"for identification, is it not? A. Yes, page 91.

"Q. And is it not a fact that in determining whether a carrier is living up to the obligation of careful proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves? A. Sure.

"Q. And is it not also a fact that in determining whether the carrier is living up to that obligation, the Netherlands courts take into account the whole stowage of all the goods on the ship? A. Sure.

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"Q. And that includes, does it not, goods which may have been stowed on the ship at prior ports including foreign ports? [813] A. Yes. You mean that the stowage in a foreign port . . .

"Q. If the ship comes to a Dutch port with goods stowed at foreign ports on board . . . A. And other goods are stowed in Dutch ports . . .

"Q. Yes. A. Oh yes.

"Q. And then, to sum up our exchange, the Netherlands courts do take into account the goods that have been stowed at those foreign ports and the goods stowed at the Dutch ports? A. Yes.

"Q. Now there is a royal decree relating to the stowage and carriage of dangerous goods and that is the decree of November 26, 1932, as amended on December 27, 1939, is it not? A. Yes.

"Q. Check that if you wish. A. November 26, 1932, there was . . .

"Q. And that was amended December 27? A. Replaced by another one, that is not the same.

"Q. It was the replacement of December 27, 1939? A. No, surely not.

"Q. Let us go back. I asked you whether there was [814] a decree of November 27, 1939, relating to dangerous goods. Your answer was yes. Then as I understood you that was replaced. A. In 1952. The 31st of December 1952 a new Schepenbesluit came into force.

"Q. As of June and July, 1952, it was the decree of November 26, 1932, as amended December 27, 1939, which was in effect? A. It has been amended several times, in 1936, 1937, 1939, 1940, 1947, 1948, 1949.

"Q. And as amended up to June and July 1952 and as in force at that time that decree contained a definition of dangerous goods other than liquids, did it not? A. Yes, a definition. I don't know whether I must say definition, but it mentions in art. 94 sub 4 goods which are not liquids, solid goods.

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"Q. And in that part of it to which you have just referred, what does it say?

"Mr. Stonebridge: We have a certified translation of that sub-section.

"Q. And the portion to which you referred is sub-section 4 of sec. 94 in that translation, is it not? A. Yes.

[815] Mr. Longley: I think at this point it might be well to read Subsection 4 of Section 94.

"Solid substances which are easily inflammable or which when heated to 70 degrees Celsius may evolve combustible gases, must be carried in gas-type containers. These substances must be stowed at a safe distance from bulkheads and pipe lines which may be exposed to heating. If stowed on deck they may not be exposed to direct rays of the sun. The substances mentioned in the present subsection and substances mentioned in subsection 156 and 157 may not be stowed in the same spaces."

(Continuing reading)

"Q. You told us did you not that you are not a chemist? A. That's right.

"Q. You are not in a position to say of your own knowledge whether naphthalene is easily inflammable, is that correct? A. I know it is, but . . .

"Q. You were not in a position to say of your own knowledge whether naphthalene when heated to 70°C may evolve combustible gases? A. I never made a check but I take it for granted.

[816] "Q. You agree do you not, that whether naphthalene is inflammable is a matter of fact? A. I think so.

"Q. And it is also a matter of fact whether naphthalene will evolve combustible gases when heated to 70°C? A. I am not familiar of American law, but I would call it a matter of fact."

I should say parenthetically that "centigrade" and "Celsius" are the same. I did not know it until this case —"Celsius" and "Centigrade" are the same thing.

Mr. Pyne: That is right.
Mr. Stonebridge: Agreed.
Mr. Longley: (Reading)

"Q. You agree, do you not, that the mere practice of persons who deal with naphthalene does not ultimately determine either of those facts? A. I agree.

"Q. Now, the Netherlands is a party to the International Convention for the Safety of Life at Sea signed at London in 1929 and 1948, is it not? A. I don't remember.

"Q. You have told us that you know of no regulation [816a] in the Netherlands covering the stowage of naphthalene by name? A. Yes.

"Q. In instances in which the courts are called upon in the Netherlands to determine whether or not the stowage of a commodity not mentioned by name in the regulations is proper or not, what sources do they go to for information? A. To experts."

[817] "Q. And to what kind of experts? A. Well, cargo experts, naval experts, retired captains.

"Q. All three? A. A retired captain is a naval expert.

"Q. Do they also refer to commentaries? A. Sure.

"Q. And to books dealing with different kinds of commodities involved in the particular question that they are called upon to determine? A. They consult commentaries.

"Q. Do you yourself know of any commentaries that they have used? A. The best known commentary in Holland is Noordraven.

"Q. Is that the name of the author? A. Yes.

"Q. What is the name of the book? A. Het Beladen.

"Q. You are familiar with that book? A. I have consulted it several times.

"Q. You know that the courts have consulted it? A. I take it for granted that they consult this book when they are considering their decision, but that [818] is mostly not mentioned in the decision.

"Q. Het Beladen contains a reference to coal tar products, does it not? A. I did not consult it now. I don't know.

"Q. Have you ever known courts of the Netherlands to consult Aeby's book on dangerous goods? A. I don't know whether or not they do."

Mr. Longley: Now the next goes into Mr. Zisgen's cross-examination of what I call chit-chat, so I assume that I should not read that.

Going now to the middle of page 23:

"Q. Now as I understood you the only authority in which any Dutch shipping official could make regulations concerning dangerous goods was to be found in July 1952 in sub-section 13 of art. 94, is that correct? A. No, that is not correct.

"Q. That is what I understood you to say. A. That is incorrect.

"Q. What are the facts? A. That the whole of the article 94 is dealing with this matter. Sub-section 13 is only a part of it.

"Q. You do not consider that under Netherlands law there may be authority in shipping officials to make regulations to carry into effect let's say the provisions of [817] the Hague Rules? A. No, surely not. We are not in a Hitler country. There should be an act.

"Q. And what do you mean by act? A. An act of Parliament.

"Q. What I might call a statute? A. That's right.

"Q. Am I correct that there are in the Netherlands first these acts of Parliament, second Royal Decrees? A. If provided for by an Act of Parliament.

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"Q. And only if provided for in an Act of Parliament. What is a ministerial decree? A. That is something the Act or Royal Decree has delegated a certain power in the minister without the Crown.

"Q. Then a ministerial decree would be one which did not require the Crown's assent? A. That is correct.

"Q. Then beneath those ministerial decrees or regulations—— A. If they are provided for in a higher region.

"Q. So that in a sort of hierarchy we might have an Act of Parliament which authorizes the Crown to issue a decree —— [820] A. Or the minister.

"Q. Or that Act of Parliament might authorize the minister to issue a decree without royal consent? A. Yes.

"Q. Similarly, I take it, a Royal Decree if authorized by a statute of Parliament might authorize a minister to issue a decree in accordance with the Royal Decrée or the Statute. A. That is right.

"Q. Then in turn in a proper case the ministerial decree might authorize an appropriate official to issue regulations under it, is that correct? A. I see no objection, however I don't know an example by heart.

"Q. You know of no legal reason why that situation could not exist? A. No.

"Q. In other words, so long as you have at the top of the pyramid an Act of Parliament, there is no prohibition in the law of the Netherlands against delegation on down through a Royal Decree, a ministerial decree and the regulations to lower officials to exercise certain powers, is that correct? A. Yes, I think that is correct. The official may not be too low, but——

[821] "Q. That is a question of degree. A. A question of policy. For instance here the Royal Decree, not a ministerial decree, has delegated certain powers to the Inspector General of Shipping.

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"Q. That is what I was coming to. A. Mind you, it is the Royal Decree which has delegated power.

"Q. To the Inspector General to make regulations? That was the situation in July 1952? I take it that there is no question that in June and July 1952 the Inspector General of Shipping had the power to make regulations with respect to the carriage of naphthalene. A. No, that is not correct. Only if naphthalene is meant in article 94.

"Q. Now that puzzles me a little. A. And if it is meant, it would come under article 94 sub-section 4, and as sub-section 4 says that the solid goods meant in that sub-section must be packed in gas-tight containers, of course the Chief Inspector of Shipping is not entitled to make a deviating regulation.

"Q. That is your conclusion? A. No, that is not my conclusion, that is certain.

"Q. You agreed with me that you were not a chemist? A. I will maintain that up to my death.

[822] "Q. And you agreed, did you not, that whether or not naphthalene was inflammable was a question of fact? A. Yes.

"Q. And you agreed, did you not, that whether or not naphthalene at 70° C may evolve combustible gases is a question of fact? A. Yes.

"Q. I put it to you again that your earlier answer is your conclusion, is it not? A. My earlier answer to what?

"Q. Your earlier answer that because naphthalene is not required to be packed in gas-tight containers, it is not within the provisions of sub-section 4 of article 94. A. My answer is that if the fact is that naphthalene falls under the wording of sub-section 4, then it should be packed and it may only be packed in gas-tight containers and nobody is entitled to deviate from that rule.

"Q. And that is the whole basis for your opinion that naphthalene is not within sub-section 4 of article 94? A. I have no opinion on that subject as I am not a chemist, but if

the fact is that it falls under that sub-section, then it must be packed in gas-tight containers. No exception.

"Q. Let us assume that that is so. That is not [823] quite the same thing, is it, as your earlier statement that because it is not packed in gas-tight containers it is not within the sub-section?"

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You can conceive of a situation, can you not, in which shippers and carriers both ignore or violate a statute or a regulation? A. I can conceive that they do one or twice, but not regularly.

"Q. You do not want us to understand that under the law of the Netherlands one or two violations of a statute are crimes but more than that are not? A. Of course not, but one or two might not be discovered, that is what I mean.

"Q. Your point is simply that the existence of a practice, an invariable practice over a long period of time, itself establishes that the practice does not violate the law? A. No, the practice may not violate the law.

[824] "Q. I am not sure that I am quite clear what your last answer means. A. When there is a law, a deviating practice can never be stronger than the law, can never put aside the law.

"Q. And you reason from that, if there is an invariable practice which has continued for a long time, that in itself is conclusive evidence that there is not a violation of law involved in the practice, is that correct? A. I think so.

"Q. You told us with respect to the Notice to Shipping which has been marked Van Rossem Exhibit 3 for identification,——"

Mr. Longley: That is what exhibit now?

The Court: It is now Petitioner's Exhibit U.

Mr. Longley: (Continuing:)

"——Petitioner's Exhibit U, that it must have come into effect shortly after November 19, 1952. What did you mean by saying 'must have'? A. Because no regulation can possibly come into effect before it is born.

"Q. And what did you mean by saying 'before it is born'? A. It has a date, a Notice to Shipping dated [825] November 19, 1952, cannot possibly come into effect on the 18th.

"Q. Your point is simply that the regulation has no force until it is published in printed form, is it not? A. Not only in printed form, but published in the proper way, in the Government Gazette, as this has been published in the Government Gazette.

"Q. That is the Staatscourant? A. Yes.

"Q. Is that the only way in which regulations on any subject are published in the Netherlands? A. There are two ways, the Staatsblad and the Staatscurant. The Staatsblad is for acts of Parliament and royal decrees relating to general subjects. There are royal decrees which relate to a special subject such as nomination of a judge or government official, those are published only in the Staatscurant, not in the Staatsblad.

"Q. And in your view no law, no statute, no decree, no regulation can have any binding force in the Netherlands unless published in one or the other of those two publications. A. That is right.

"Q. You told us that acts of Parliament and royal [826] decrees were expressly required to be published. Can you give us the reference to the law or decree so requiring? A. Constitution, art. 74. It says that laws have to be made for the promulgation of acts of Parliament and royal decrees.

"Q. And as to ministerial decrees I understood you to say that there is no such express requirement. A. There is an express requirement but not in an act.

"Q. That express requirement appears where? A. That is stated by the Supreme Court as I mentioned.

"Q. That is the decision in Jurisprudence 1936 No. 490. Are you familiar with the doctrine stare decisis? A. I know what it means, that you are governed by decisions.

"Q. Yes. The doctrine of stare decisis is not followed in the Netherlands, is it? A. No, it is not, at least not as such.

"Q. And I take it, Doctor, that what you mean is that, while the courts may not be legally obliged to follow earlier decisions, in practice they accord them respect? [827] A. Not only respect but they accord them a very considerable degree of guidance.

"Q. And it is on the basis of that decision in 1936 that you base your opinion that ministerial decrees and regulations must be published in one or the other of the publications which you mentioned in order to have binding force? A. Not only on that decision. That decision only reflects the opinion of the Dutch law people.

"Q. The Dutch lawyers? A. The judges as well. Of the Dutch people who have studied law. That is what I mean.

"Q. That is merly an opinion, is it not? A. Oh, no, that is not an opinion. It is said so——

"Q. Perhaps I have not made myself clear. When I said that is only an opinion, I was referring to your statement that the Dutch lawyers and Dutch students of the law held that view. A. Yes, that is right.

"Q. Now you told us, that section 12 of art. 94 imposed a duty on the shipper in July 1952 to notify some Government official when dangerous goods were to be carried, did you not? [828] A. He has the duty to notify if the loading happens in this country, to notify the head of the District of the Shipping Inspection. That is what is said there.

"Q. What is your understanding of the purpose of that requirement? A. Only to safeguard the people.

"Q. And by people I suppose you mean the master, the crew and any passengers who might be there? A. Yes.

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"Q. The danger that that requirement was designed to avert would exist equally whether the ship were Dutch or of foreign nationality, would it not? A. Of course it would.

"Q. Would it be your opinion that that duty existed whether the shipment of the particular goods was to be made on a Dutch ship or a foreign ship? A. No, it is not only my opinion, it is a fact, that the whole law only concerns Dutch ships, no matter where they are, but Dutch ships.

"Q. You told Mr. Stonebridge, as I understood you, that the shipping officials were authorized to detain foreign vessels from sailing. A. Yes.

"Q. If as a result of bad stowage their condition [829] would endanger the persons on board? A. Yes.

"Q. You told me I thought that the purpose of the regulation requiring shippers to notify the shipping officials when dangerous goods were to be shipped was for the safety of the persons on board? A. Yes, I did.

"Q. Then I don't understand why you seem to feel that this obligation imposed by sub-section 12 of art. 94 is not applicable when the goods are to be shipped on foreign ships. A. My conclusion is that the law does not say so, but nevertheless according to art. 69, sub-section 1 of the Schepenwet, if the Shipping Inspection discover anything mentioned in that sub-section, they are entitled to detain the vessel, and moreover the local harbormaster has an analogic power, because he looks after the safety of the harbors. So if any ship by the way of stowing should endanger the harbor he has the right to detain it as well.

"Q. And both of those authorities would be entitled to exercise their power of detention even though the shipper had not notified them that dangerous goods were to be shipped? [830] A. Yes, that is correct.

Deposition of Dr. W. N. E. Van Rossem

"Q. The danger both to the persons on board and to the safety of the harbor would exist equally whether—— A. Yes, of course."

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"Q. According to your view, there has not been ever any regulation regarding the carriage of naphtha- [831] lene? A. Yes.

"Q. And there are not now? A. Correct.

"Q. Why, if that is so, would the Shipping Inspector of the Second District send to Van Nievelt Goudriaan & Company a copy of the proposed regulations which has been marked Van Rossem Exhibit 5d?"

Mr. Stonebridge: I object, your Honor. I do not believe that 5d has been put in evidence in this trial.

Mr. Longley: It is going to be offered in evidence right now.

Mr. Stonebridge: I object to its introduction.

Mr. Longley: I will now offer in evidence a letter addressed to Van Nievelt Goudriaan & Company, which is the general agent at Rotterdam of the Black Diamond Steamship Company, from the Shipping Inspector of the Second District, dated May 3, 1954, with the enclosure. The two have heretofore been marked for identification Van Rossem's Exhibits 5c and 5d.

Is that the original that has been so marked?

Mr. Zisgen: Yes, that is correct.

Mr. Longley: This is a translation that I [832] have in my hand.

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[847] "Q. Even though you are not a chemist, you will agree I think that any dangerous characteristics which naphthalene will have when these proposed [848] regula-

tions are published, it has now? A. The danger is not determined by any regulation, of course not.

"Q. The same is true as of June and July 1952, is it not? A. Yes, it has always been true and it will always be true.

"Q. And yet in your view for a substantial period of time the Inspector General of Shipping, by delaying the issuance of the regulations which are to be published in this book—— A. Beg pardon, the minister.

"Q. Very well, the minister by delaying the issuance of the regulations which are to be published in this book, has made it possible for shippers and carriers alike to expose persons on board ships and the harbors in which those ships are loaded to whatever dangers there may be in naphthalene, without any hindrance from him. A. Yes, sure.

"Q. Does not that seem to you to be a strange attitude on the part of an official charged with the duty of preserving safety? A. I take it that apparently they don't [849] consider the danger very large, or even they don't see any danger perhaps.

"Q. If they don't see any danger, then what is the statutory authority for the proposed issuance of the regulation? A. The statutory authority must be in first instance the Schepenwet and in the second instance the royal decree, and if naphthalene does not fall under any regulation of art. 94 or 99, not a single authority is entitled to make any regulation concerning naphthalene.

"Q. The fact that the shipping authority proposes to issue a regulation concerning naphthalene indicates a determination by the authority that it is entitled to issue such a regulation, does it not? A. It looks like they think they are entitled and that is perhaps why they quote art. 99, overlooking the fact that art. 99 mentions gas-tight containers.

"Q. And that determination of theirs, whether it is correct or not, in turn involves a determination that naphtha-

lene falls within the definition of dangerous goods, does it not? A. I can't say that, for as I pointed out before there is a discrepancy between the reference to art. 99 on the one side and the close-woven bags [850] on the other side, and at last, if the minister should mention in his book to be published any regulation which is not in accordance with either the act or the royal decree, it is the duty of the courts to decide that this regulation is invalid.

"Q. You told Mr. Stonebridge something about art. 69 sub-section 1 and you were referring to the 1954 edition marked Beerman Exhibit 4"—that is now Libelants' Exhibit 37, and the translation is 37-A—"Can you tell me whether in July 1952 there was a similar provision or a comparable provision to the one to which you referred? A. Quite the same I think. It is quite the same wording.

"Q. Do you not agree that the formulation of regulations to be published in the future concerning the stowage and carriage of naphthalene in itself is proof of some crystallization of opinion as to the proper way of handling it? A. No, that goes too far.

"Q. You think that is purely an experimental affair? A. Yes.

"Q. Do you not agree that negligent stowage of cargo, even though the negligent method is not [851] specifically prohibited by a regulation, is a violation of your Netherlands maritime law? A. Yes. Not of the penal law but of the commercial code.

"Q. Embodied in Beerman exhibit 1? A. Negligent stowage is prohibited, of course.

"Q. I am asking you to assume negligence in the question I put to you, and I am asking you, if it is not a fact that negligent stowage violates the Netherlands Code of Commerce. A. Yes."

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Mr. Longley: If the Court please, I will withdraw my objection to the reading into the record of the testimony on which your Honor ruled yesterday.

The Court: Do you care to read the testimony which was excluded yesterday——

Mr. Longley: I withdraw my objection.

Mr. Pyne: Yes, your Honor, we will put the whole thing in.

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[852] Mr. Stonebridge: Your Honor, do I understand correctly that as a result of Mr. Longley's withdrawal of his previous objections the testimony of Dr. Van Rossem will be read in completely, and all of the exhibits referred to therein will be admissible without objection to him?

Mr. Longley: That is correct, so long as my letter is in, too.

Mr. Stonebridge: I was going to add that I withdraw any objection that I may have made to the introduction of Beerman Exhibit 3.

The Court: Very good.

Mr. Pyne: We take the same position, and do the same thing, your Honor. It comes down to what we offered to do at the outset.

Mr. Longley: Yes, I guess so.

The Court: I suppose that it is expecting more than can be expected of human beings not to express a little exultation from time to time. I will not comment.

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[853] "Q. I show you, Mr. Van Rossem, a letter which is dated 30 July 1954 "—which has been here marked Libelants' Exhibit 35 for identification—" and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did."

Mr. Longley: Before we go on, I should now offer this letter in evidence. It is marked for identification solely heretofore.

(Libelants' Exhibit 35 received in evidence.)

Deposition of Dr. W. N. E. Van Rossem

Mr. Longley: Perhaps since it is now in evidence, I should read it to your Honor.

The Court: Yes, I would like to get the continuity.

Mr. Pyne: The translation is attached.

Mr. Longley: It is from the Inspector General for Shipping——

Mr. Pyne: It is signed by a subordinate, who signed it. It is from that office but it is not signed by the Inspector General.

Mr. Longley: Well, it is signed "Inspector [854] General for Shipping, per B. E. Van Bruggen."

It is dated July 30, 1954:

"Reference: S.S. 'Black Gull' "——

It is on the letterhead of the Inspector General of Shipping, written from The Hague.

"In reference to your letter"——

The Court: To whom is it addressed?

Mr. Longley: To John Hudig & Son, Lloyd's Agents at Rotterdam.

"In reference to your letter No. 47631 Z/B of July 23, I inform you that to my regret it is not possible to make a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

"I therefore will limit myself to confirming that at the time of the loading of the S.S. 'Black Gull,' in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

" 'Napthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.

Deposition of Dr. W. N. E. Van Rossem

[855] " 'Stowage may be on deck or under deck.

" 'On deck, the naphthalene must be protected from the effects of the sun's rays and kept at a distance from the crew's quarters.

" 'Below deck in a well-ventilated dry space.

" 'In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene).' "

Mr. Pyne: Now, may I repeat, your Honor:

"Q. I show you, Mr. Van Rossem, a letter which is dated 30 July"—now marked Libelants' Exhibit 35"—"and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did.

"Q. When and where did you make that investigation? A. I made that investigation last Saturday 20 August 1955 and I saw the Inspector General at his office at The Hague.

[856] "Q. Which inspector was it that you saw there at that time? A. The Inspector General himself was on holidays, I saw the second in command, called Mr. J. Metz. I saw him together with Mr. Alexander Rein from Oslo.

"Q. Will you tell us what was done and said on that occasion? A. I showed him this letter and I asked him where the quotation in that letter came from, as I did not find that quotation for myself and I very much doubted whether it was genuine. The only thing he could produce, and he produced it at once, was a printer's proof of what was meant to be part of the book to be issued according to art. 99 sub-section 15 and that printer's proof showed alterations in pencil. Then I drew his attention to the fact that this printer's proof mentioned art. 99, so it must have been

issued after the Schepenbesluit which came into force in January 1953 came into force, so that this printer's proof could have no bearing on the period when the disaster of the Black Gull took place in the summer of 1952. Moreover, looking through the printer's proof it was obvious that the wording of that proof was by no means [857] identical to the wording of the quotation in the letter of July 30, 1954," —Libelants' Exhibit 35.

That ought to be July 30—that is typographical.

Mr. Longley: Yes, that should be July 30.

Mr. Reporter, will you read the answer again?

(Record read)

Mr. Longley: You don't need to read our objections.

Mr. Pyne: Continuing with the witness's answer at the bottom of page 13:

"Mr. Metz admitted the correctness of my remarks. And then he left the room, telling me that he wanted to look for the original of the said quotation. After five minutes he came back, telling me that there was none available, but that one of his employees was continuing the investigation. Sometime later on an employee entered the room and showed to Mr. Metz a sheet of paper mentioning several words with the"——

Mr. Longley: That should be "words."

Mr. Pyne: It is "goods" in mine.

Mr. Longley: So it is, but you do not want goods, do you?

Mr. Pyne: It doesn't matter.

Mr. Longley: It is "words."

[858] Mr. Pyne: (Continuing reading).

". . . mentioning several words with the initial N. One of them was naphthalene. The employee said that this was the only paper available concerning the period before the Schepenbesluit 1952 came

into force (Beerman Exhibit 4). On that sheet of paper was mentioned that naphthalene had to be packed"—there are some Dutch words and the translation is bags, wooden or steel barrels or boxes".

And then there are some more Dutch words—— ". . . and as to the stowage there was mentioned the following"—and then there are some Dutch words again and the translation is below—"on deck, or below deck, cool, well-ventilated, away from food and other articles for human consumption, and from living quarters, not together with substances coming under Section 94, Sub-sections 1, 5, 6, 7.

"Mr. Metz repeated that this sheet of paper was the only one available concerning the period before Beerman Exhibit 4 came into force,"——

Mr. Zisgen: That is Libelants' Exhibit 37.

Mr. Pyne: Libelants' Exhibit 37—"came into force, and he repeated again that he could not tell me, which did not surprise me, where the [859] quotation in Beerman Exhibit 3 came from."—which is Libelants' Exhibit 35.

"Then I asked him, is it true perhaps that what is mentioned in that quotation came into your mind or better in the mind of the Shipping Inspection only after they had heard of the disaster of the Black Gull and the cause of that disaster? A. To this question Mr. Metz replied without any hesitation: 'I cannot admit that nor can I deny it.' At the end of our conversation I asked Mr. Metz whether he was willing to put down some of his information in a letter addressed to me and then he said he was willing and he wrote to me this letter dated August 20, 1955."

Now I will offer that letter, your Honor, the Dutch original, with a certified English translation attached.

(Marked Petitioners' Exhibit V.)

Mr. Pyne: May I read the letter, your Honor—or would your Honor prefer to read it yourself?

The Court: I will read it.

(Mr. Pyne hands to the Court who examines.)

Mr. Pyne: (Reading)

"Q. In your recital, Dr. Van Rossem, of your [860] conversation with Inspector Metz, did you cover all of the important matters which now occur to you? A. Yes.

"Q. Then I ask you personally whether or not there was anything said as to whether or not there had ever been published any rule or regulation by the Inspector General concerning naphthalene and, if so, what was said in that connection?

"Did you have any conversation on that point with Inspector Metz as to whether or not anything had been published? A. We had a conversation on that point, but he admitted that nothing had been published.

"Q. Did you have any conversation with Mr. Metz, was anything said, and, if so, what by each of you concerning the question as to whether or not the printer's proof he showed you had been published? A. He emphasized that it had not been published, it was only a proof.

"Q. In the course of your investigation made at my request, did you learn or hear of any statement made by the Shipping Inspector of the Second District? A. Yes.

"Q. I show you what purports to be a copy of a [861] letter from that Inspector and a document attached, both bearing the date of 3 May 1954, and ask you whether or not that is the statement which you learned of or became aware of in the course of your investigation? A. Yes."

Mr. Longley: I offer the translation for identification.

Mr. Pyne: We have it—thank you.

Mr. Longley: Do you have the original in Dutch?

Mr. Pyne: Yes. I ask that that letter of 3 May—we have the original in Dutch and we will attach an English translation of it also—I offer that in evidence, your Honor.

(Marked Petitioners' Exhibit W.)

Mr. Longley: Perhaps the record should show that Petitioners' Exhibit W has heretofore been marked for identification as Libelants' Exhibit 44, which is the one your Honor ruled on just before the recess.

Mr. Pyne: Now, at the top of page 16:

"Q. Did you in the course of your investigation see or learn of any statement by the Rotterdam Harbor Master, Captain Van Leeuwen, with respect to dangerous goods or naphthalene? A. Yes, I did."

[862] Mr. Pyne: (reading)

"Q. Is this document I show you that paper? A. Yes, it is."

Mr. Pyne: I offer that paper in evidence, your Honor, in English.

(Marked Petitioner's Exhibit X.)

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[863] "Q. In answer to one of Mr. Pyne's questions you referred to something called Shipping and gave a reference '1/1952'. What was that? A. I don't know what you mean.

"Q. I think that the reference came from note 1 at the bottom of page 191 in Beerman exhibit 4 for identification."

Mr. Zisgen: Now Libelants' Exhibit 37.

A. I referred to this note 1, I did, but only to show that the new Schepenbesluit came into force on January 26, 1953.—

"Q. What are the last two lines of page 191 of this exhibit? What do they say in English? My notes are not clear. A. 'As to the Netherlands Antilles: 1st July, 1953 (Decree of June 8, 1953, Government Gazette 274), look at notice to Shipping No. 1/1952, mentioned hereafter.'

"Q. What are these Notices to Shipping referred to here? A. *You can find them in the book,* all over it. They are regulations issued by the Inspector General of the Shipping.

"Q. Printed in Beerman Exhibit 4"—now Libelants' Exhibit 37—"is that correct? [864] A. Yes.

"Q. You told Mr. Pyne that under the authorities naphthalene did not fall within section 94 of the decree which was in effect in July 1952. What did you mean by the phrase 'under the authorities'? A. I think you are mistaken.

"Q. I will ask the reporter to read the question and answer to which I have referred.

> "Reporter reads: 'Q. I am asking you to assume that it is not and never has been packed in gas-tight containers. Would it follow in your opinion as a matter of law as to whether or not it could be said to fall under that section? A. To this I can only answer that apparently according to the opinion of the authorities it does not fall under sub-section 4.'

"My question is, what did you mean by 'the opinion of the authorities'? A. Of the Shipping Inspection for instance.

"Q. That is the authority to which you referred in your answer to that question? A. Yes, as well as the harbor Master.

"Q. And you based that statement on the investigation which you made on August 20th? [865] A. Not only on that.

"Q. Plus the letters which you received from the Inspector General at The Hague subsequent to August 20th and the letters from the Inspector of the Second District and from the Harbor Master, is that correct? A. Yes. I don't know whether this is complete but what you said is correct. I refer especially to the letter of May 3, 1954.

"Q. And that is the letter which has been marked Van Rossem Exhibit 5C and its enclosure Van Rossem Exhibit 5D, is it not?"

Those now being Petitioner's Exhibit W.

A. Yes. May I——

"Q. As far as I am concerned you have answered the question."

Mr. Longley: Mr. Pyne tells him to go on, and he goes on:

A. I should like to point out that the enclosure the Shipping Inspector of the Second District added to his letter of May 3, 1954, contains first the reference to section 99 sub-section 7c of the Shipping Decree of 1952. There it is said that the goods mentioned in that sub-section should be packed in gas-tight containers, whilst the next line of that enclosure says 'packing in [866] close-woven bags'. As a close-woven bag cannot possibly be gas-tight packing, I conclude that the Shipping Inspection themselves do not consider naphthalene as to be necessarily packed in gas-tight containers. There is a discrepancy between those two statements, which Mr. Metz was not able to clear up, but he had to admit the discrepancy.

"Q. That is your conclusion. A. That is a fact."

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"Q. Coming now, Dr. Van Rossem, to your visit to the office of the Inspector General of Shipping on August 20th, I take it that that office did not deny that the letter which

has been marked Beerman Exhibit 3 for identification"—now Libelants' Exhibit 44 for identification—"was authentic. A. No, surely not.

"Q. Did you ascertain by whom the letter had been signed? A. It has a signature. Mr. Metz told me, that the signature is of no importance, for the letter must have been written by somebody else.

"Q. Someone else than the person who signed it? [867] Who is the person whose signature appears on the letter? A. I don't know him personally but it is an engineer.

"Q. An engineer in the office of the Inspector General of Shipping? A. Yes, Mr. Van Bruggen happened to be the highest in command available at the moment this letter was signed.

"Q. That is the highest in command available at the office of the Inspector General of Shipping? A. Yes."

Mr. Pyne says, "And also limited to the particular time that the letter was signed.

A. Yes, at the moment the letter was signed.

"Q. Do you know whether Mr. Metz, to whom you talked, had been second in command of the office of the Inspector General of Shipping in 1952? A. I think so. He told me that he was at the Shipping Inspection for I think four years.

"Q. But you know that only because of what he told you? A. Yes, I'm not guessing for it.

"Q. You do not know when the printer's proof which Mr. Metz showed to you had physically been printed at some printer's shop? [868] A. The only thing I know is that it must have been printed after art. 99 came into force.

"Q. Which I think you told us was January 1953. A. Yes.

"Q. Did you enquire whether that was the first proof or the second or the third or a subsequent one? A. No, I did not enquire especially.

"Q. So far as you know or have been informed, there may have been earlier printer's proofs which this proof which was shown to you has replaced? A. There may have been, but they could not produce any.

"Q. Do you have occasion to have books or briefs printed in your practice? A. Printed, if I have briefs printed? Yes, now and then.

"Q. Do you sometimes get more than one proof? A. Perhaps I do.

"Q. What do you do with the first proof when you get a revised proof? A. I keep it. I should certainly keep it when it was a regulation.

"Q. But you don't know whether the office of the Inspector General of Shipping follows the same practice. A. Of course not, I don't know. But I take it [869] for granted that it must be in a well-civilized government office, that when they are making a regulation and when they are quoting it to the outside for instance in a letter of July 30, 1954, that they will never destroy the original of such quotations. According to my opinion that is inconceivable.

"Q. But that again, Doctor, is your conclusion, based upon what you think they ought to do, is that not so? A. Yes."

* * *

Mr. Pyne: I would like to read from the deposition of Dr. A. Blussee Van Oud-Alblas:

"Q. Where do you reside?

(Mr. Smith reads the answers.)

A. At Rotterdam.

"Q. What is your occupation? A. I am what you might call a lawyer; we call it 'Advocaat'.

"Q. Are you a member of any law firm, and if so, what firm? A. I am a member of the firm of Dr. Bonjer, Dr. Blusse and Mr. Schaberg.

[870] "Q. For how many years have you been a lawyer? A. For 26 years.

"Q. Will you tell us what your education has been from a college or university standard onwards and particularly with respect to law studies? A. I was born at Dordrecht, followed there the gymnasium, studied law as Leyden University, passed my doctorate examination in 1927 which entitled me to the degree of Master of Law. Subsequently I was promoted in December 1929 to Doctor of Law on a dissertation book.

"Q. Was that degree a university degree? A. Yes, it is the university degree of Doctor of Law at Leyden.

"Q. Since 1927 when you became a Master of Law have you continually been engaged in the active practice of the law? A. I started practicing as a lawyer in March 1929 at Rotterdam. Since I had obtained my degree of Master, I had commenced my studies for this book, in order to be promoted.

"Q. At all events since 1929 and when you became a Doctor of Laws you have continually been in active legal practice? A. Yes, I did.

[871] "Q. And you, like all lawyers, are licensed to practice law before all law courts in the Netherlands? A. Yes, including the Supreme Court.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, Maritime Law, marine insurance, and quite another area; expropriation law.

"Q. Are you a member of any legal institutions, associations or clubs or societies? A. Yes.

"Q. Will you name them? A. Naturally I am a member of the Netherlands Union of Attorneys. I am also a member of the Netherlands Association for Maritime Law, which is a branch association of the Comite Maritime Internationale.

"Q. In one of your earlier replies you have referred to some book or treatise you have written. Will you be good

enough to tell us what book that was? A. On the Hague Rules in the Brussels Convention 1924.

"Q. And you have published that book or treatise? A. I have got it with me. I will show it to you."

Mr. Pyne: He presents a book published in 1929, at Leyden, with the name of the firm of publishers, [872] and the title of the book, "De Hague Rules in de Brusselsche Conventie 1924.

(Continuing reading:)

"Q. Have you made a research or investigation of the question as to whether or not in the Netherlands there is any law, rule or regulation concerning the manner of loading, stowing or carrying crude naphthalene on vessels? A. Yes.

"Q. Was there in June/July 1952 in force in the Netherlands any such rule or regulation which specifically referred to or mentioned naphthalene? A. No.

"Q. Is there now and since June/July 1952 has there been any such law, rule or regulation specifically mentioning or referring to naphthalene? A. No.

"Q. Was there in force in June and July 1952 in the Netherlands any general laws, rules or regulations concerning loading, stowing or carrying on vessels of dangerous cargoes? A. Yes.

"Q. Will you identify the law for us. A. You are talking about June and July 1952?

"Q. That is correct. [873] A. We then had regulations regarding dangerous cargo in the so-called Schepenbesluit which I have here.

"Q. Will you identify the article in which that regulation is contained and the page of the particular book?"

Mr. Pyne: The page will be different, your Honor. We have a later edition which was identified with different paging. The part we are interested in here is identical with Libelants' Exhibit 34-A, the

translation of Article 94. If that is agreed, I won't mark this book for the time being.

Mr. Longley: That is all right; you do not need to put it in twice.

Mr. Pyne: (Continuing reading)

"Q. Coming down to the present time, is there now in force in the Netherlands any general law, rule or regulation concerning the loading, stowing and carrying on vessels of dangerous cargoes? A. Yes. The Schepenbesluit which was in force in June and July 1952 was replaced by another one which came into force in the beginning of January 1953. I'll tell you exactly, on January 26, 1953, and in this new Schepenbesluit called Schepenbesluit 1952, because the date of the decree was December 31st, 1952, you will find regulations also regarding dangerous goods in [874] Article 99."

Mr. Pyne: I will state here also, your Honor, that Article 99 as a translation has been marked Libelants' Exhibit 37-A for identification.

Mr. Zisgen: It is in evidence.

Mr. Pyne: In evidence; I am sorry.

(Continuing reading):

"Q. In your opinion as a matter of law, would or would not naphthalene come within the provisions of the decree in force in June and July 1952 concerning dangerous cargoes?"

Mr. Zisgen: We withdraw the objection.

Mr. Pyne: (Continuing reading.)

A. I can only answer this question from the legal side.

"Q. That is all you are asked to do. A. In order to come under the regulations regarding dangerous cargoes, this crude naphthalene should conform with section 4 of art. 94.

"Q. When you say that crude naphthalene should conform with that section 4 or art. 94, will you explain to us

what you mean by that? A. That it should be a solid commodity which can easily be brought to combustion or which when heated [875] up to 70° C would give combustible gases.

"Q. Are you able to state whether or not naphthalene is such a product? A. No, I am no chemist,

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[877] "Q. In your opinion as a matter of law, if crude naphthalene were according to a chemist a product included in the definitions in sub-division 4 of art. 94, would it be legally permissible under Netherlands law to carry crude naphthalene otherwise than in gas-tight packings? A. Definitely not, unless there might have been given a special exemption of this rule.

"Q. Would you please explain to us from a legal [878] aspect what you mean and what law, if there is a law, you referred to when you mentioned that special exemption or dispensation? A. The rule given in art. 94 section 4 is a very clearly worded and strict one. Those commodities must be carried in gas-tight containers, so this rule being clear, it has to be followed up and anybody acting against it is acting in controversion with this rule and with the Besluit. Only art. 123 of the Besluit allows the Queen or in special circumstances the Chief Inspector of Shipping acting in name of the Queen, to give dispensation. I must remark, however, that this only regards exceptional circumstances and that even then no conflict may come about with the international treaties on this subject.

"Q. Would that section to which you have just referred permit the exemption to be a general one or would it require that it would be in each instance in a particular case? A. Certainly not a general exemption, because the wording of the article clearly mentions that it is only meant for exceptional situations.

Deposition of Dr. A. Blusse

"Q. Will you identify the portion you have [879] referred to? A. Von Rossem exhibit 1, page 169, chapter 13, art. 123."

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(Marked Petitioners' Exhibit Y.)

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"Q. If crude naphthalene were a product not within the definitions of art. 94, would any Government official or Government employee have authority or any legal right to make rules or regulations concerning crude naphthalene? A. No, because art. 94 opens the possibility, in section 11, of the Chief Inspector of Shipping giving supplementary regulations regarding stowage, package and carriage, but this is limited to the commodities meant in this article. Therefore he has not this authority outside the article and [880] regarding commodities not meant in this article.

"Q. Was there in June and July 1952 any Netherlands law, rule or regulation requiring products or goods referred to in art. 94 of that law to be labeled or marked in any way? A. No.

"Q. Is there now in force any Netherlands law, rule or regulation which would require products or goods referred to in any way as dangerous goods of being labeled or marked? A. Yes.

"Q. Will you point out to us and identfy that law? A. You will find this as Notice to Shipping Nr 5/1952 of November 19, 1952, in which the Inspector General orders that dangerous goods which are loaded in a Netherlands port or in a port in the Netherlands Antilles must be symbolically marked.

"Q. And what volume and page is that?

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Mr. Zisgen: 37, Mr. Pyne.

Mr. Pyne: Libelants' Exhibit 37, page 478. Has that been translated into English?

[881] Mr. Longley: 37-A is the translation.

Mr. Pyne: 37-A. Has that been translated, Mr. Zisgen?

Mr. Zisgen: I don't think that that notice to shipping has been translated.

Mr. Pyne: Well, may I have the privilege, then, with respect to 37-A, your Honor, of later supplying a translation in English of that particular page?

The Court: Yes.

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Mr. Zisgen: Before Mr. Pyne goes on, your Honor, I was mistaken about that "Notice to Shipping."

[882] Mr. Pyne: Beg pardon?

Mr. Zisgen: Notice to Shipping No. 5 in 1952 has now been marked as Petitioners' Exhibit U.

The Court: That is instead of Libelants' Exhibit 37-A?

Mr. Zisgen: No, your Honor. This is the one that Mr. Pyne asked me if it had been translated and I said I did not think it had been.

Mr. Longley: He said "Is that instead of 37-A?"

Mr. Zisgen: No, it is not instead of 37-A. 37-A is a translation of part of the statute.

Mr. Longley: I said "37-A"—it is wrong.

Mr. Zisgen: No, it should not be 37-A. It is U.

Mr. Pyne: We can correct that letter.

Mr. Stonebridge: Petitioners' Exhibit U is an English translation, your Honor, of Shipping Order No. 5.

The Court: Then when the statement was made before that the English translation of that shipping order No. 5 was 37-A——

Mr. Longley: That is an error.

The Court: ——that is an error?

Mr. Longley: Yes.

[883] Mr. Pyne: It should be Petitioners' Exhibit U, your Honor—that is an English translation.

The Court: All right.

Mr. Pyne: (Reading)

"Q. Is there a sub-section 13 of art. 94 of the decree in force in June and July 1952? A. Yes.

"Q. Will you advise us what the contents of that sub-section is and identify book and page? A. In Van Rossem exhibit No. 1, page 159"——

* * *

Yes, it is Libelants' Exhibit 34-A, Section 13, your Honor—and that is in the translation—the whole article including that section is in the translation in Libelants' Exhibit 34-A.

And the witness continues:

"Yes, this section was inserted in December 1939 and this book which should have been ready long ago does not exist.

"Q. Has any such book under that section ever [884] been issued or published up to the present time? A. No. You should say up to the new Schepenbesluit, which repeats more or less the same section and even under the new Schepenbesluit no such book has appeared.

"Q. Will you be good enough to identify for us the article, sub-section and page number and the exhibit which contains or refers to this new section you just mentioned? A. Beerman Exhibit No. 4"—that is now Libelants' Exhibits 37 and 37-A is the translation—"page 166, section 15, of art. 99."

And that exhibit, Section 99, including the Section 15, is in the translation, the section that the witness refers to, your Honor.

"Q. Under Netherlands law is there any required procedure which must be followed to give legality or any bind-

ing force or effect to any such book as is referred to in those sections to which you have just referred, 13 of the June and July decree and 15 of the January 1953 decree, or any part or portion of such book? A. In the first place I might point out that both sections only talk about the book, so I think the whole thing should be published, not part of it.

[885] "In the second place the sections themselves say already that the book has to be published by the minister.

"In the third place, in order to obtain binding force the appearing of this book should be brought to general notice by way of the Nederlandse Staatscourant.

"Q. You referred to sub-section 11 of art. 94 of the former decree in force in June and July 1952 and if I understood and recall correctly, you stated that the Inspector General under that article had authority to issue supplementary regulations concerning products or goods referred to in art. 94. Does the decree to which you have referred and which came into force in January 1953 have any such provision? A. Yes, certainly.

"Q. And what is the number of the section, book and page? A. It has got the same provision as section 12A of art. 99, Beerman exhibit 4"—that is Libelants' Exhibit 37 and 37-A—"page 165."

And again the entire section 99, including that sub-section, is in the translation, your Honor.

"Q. Under Netherlands law, is there any required [886] procedure which must be followed to give legality or any binding force or effect to any such regulation of the Inspector General? A. Yes. It must be brought to the general notice by way of the Nederlandse Staatscourant.

"Q. And how is that accomplished or done? A. I might refer to the Notice to Shipping I mentioned already Nr 5/1952, regarding the marking of dangerous goods, which is exactly given under art. 99, section 13, of the Schepenbesluit 1952. This shows how it is done.

"Q. In other words, you refer to that particular one as an example of that procedure that you say must be followed?"

And there, with permission, I will insert what has probably been left out of the transcript, an answer of the witness—the answer "Yes."

And Mr. Stonebridge remarked:

"The witness has been referring to a printed book."

"Q. Do any of those published or issued regulations of the Inspector General refer to naphthalene specifically or by name? A. No.

[887] "Q. As a matter of Netherlands law, rule or regulation, is the master, owner or any carrier by vessel under any duty or obligation to notify any Government official, Government employee or Government office when dangerous goods are being inspected to be or have been loaded on vessels? A. No. It is the duty of the shipper to do so. I refer to Section 12 art. 94"—Libelants' Exhibit 34-A—"page 150, which states that it is the shipper who is obliged to give timely notice to the captain and if the loading takes place in the Netherlands, to the District Head of the Shipping Inspection.

"Q. Are the Netherlands laws and royal decrees or rules or regulations of the Inspector General to which you have referred applicable to foreign flag vessels? A. You should look for this in art. 2 of the Schepenwet 1909. This exempts with so many words ships trading under foreign flag, provided however that the office of the company for which they are trading is not domiciled in the Netherlands and that it is not equipped in the Netherlands and that not half or more than half of the crew consists in Netherlands subjects.

Deposition of Dr. A. Blusse

[888] "Q. Will you identify book, page and article? A. Petitioner's Exhibit Y—"page 22, art. 2, section 1, letter f, together with section 2 I and II."

That has now been marked as Petitioners' Exhibit Y, and may I also request permission to supply an English translation of that section?

The Court: Yes.

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"Q. Is there any Netherlands law which distinguishes passenger vessels from cargo vessels? A. Yes. The same law, art. 1. In the definition of passenger vessels"—Petitioners Exhibit Y—"page 18, and for the now valid form of the Schepenwet"—Libelants' Exhibit 37—"page 19."

And again, your Honor, I think that section is in the translation, but if not, may I supply it?

The Court: Yes.

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[890] "Q. You agree that the maritime law of the Netherlands is based upon the same general principles as The Hague Rules? A. You should put it this way, that certain principles especially regarding stowage and care for the goods which you find in The Hague Rules you will also find in the Netherlands Commercial Code.

"Q. I think that is a better statement than mine, Doctor. And when you mentioned the Netherlands Code, you are referring to the Maritime Code which I have here in translation as Beerman exhibit 1 for identification. A. Yes, I know this book quite well.

"Q. You are familiar with that book? A. Yes.

"Q. So far as you know is it a fair and accurate translation? A. It is an accurate translation, yes. Mr. De Kock van Leeuwen, who made it was assistant secretary to the Netherlands Shipowners' Association.

Deposition of Dr. A. Blusse

"Q. Under the Netherlands Maritime Code an ocean carrier is obliged to properly and carefully [891] stow and carry the goods which she accepts for carriage, is she not? A. Those words you will not find in the Commercial Code, they are out of The Hague Rules.

"Q. Quite right. Does the essential obligation of the carrier under the Netherlands maritime law differ from the statement I have just made? A. The law says that the contract of carriage obliges the carrier to exercise due diligence for the preservation of the goods. It further states that the carrier is not allowed to stipulate that he shall not or only to a limited amount be liable for loss or damage caused by amongst others rough handling or insufficient custody of the goods.

"Q. Would you not as an attorney interpret the obligation of due diligence which you have just read us from the Code as roughly the equivalent of proper and careful stowage? A. Yes.

"Q. And you have told us that the carrier may not by contract exempt himself from that obligation, have you not? A. Yes.

"Q. That obligation extends, does it not, to [892] goods carried on deck with the shipper's permission? A. If the shipper has given the express permission of the goods to be carried on deck he has no complaint if damage is caused by the simple fact that the goods were on deck. Apart from that the carrier is under obligation for right handling and sufficient custody, which involves proper stowage.

"Q. In determining whether stowage of goods is or is not proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves, do they not? A. I think that the Netherlands law courts take into consideration everything which would be of importance in determining whether stowage is right or not.

"Q. And that would include the nature and characteristics of the goods, would it not? A. Among other things.

Deposition of Dr. A. Blusse

"Q. And it would also include what other goods were in stow on the ship, would it not? A. Yes.

"Q. And that would be true whether those other goods had been stowed at a Netherlands port or at a foreign port, would it not? [893] A. Yes.

"Q. Now, you agree, do you not, that whether a particular shipment of solid goods as distinguished from liquids comes within the definition in art. 94 is a matter of fact? A. I think this question has to be judged on the basis of the terms of art. 94.

"Q. Precisely. And art. 94 section 4 has two descriptions, does it not? In the first part, the first description is contained in the words 'easily inflammable', is it not? A. Yes.

"Q. And you agree, do you not, that whether or not particular goods are easily inflammable is a question of fact? A. Yes.

"Q. Do you not also agree that the question of whether particular goods will evolve combustible gases when heated to 70°C is a matter of fact? A. Yes.

"Q. And that fact will not be changed by the actual practice of people handling the goods, will it? A. The facts may not be changed, but it is the question whether all goods which might comply with [894] those facts would really be considered as coming under this section of art. 94. I pointed out already that to my opinion naphthalene, if it would be liable to combustion or even if it would develop combustible gases when heated up to 70°C should be considered as coming under this article. The practice I know and the practice which is common knowledge regarding those goods is that they are not considered to fall under this article.

"Q. Then what you are telling us is that the meaning of these words in section 4 art. 94 is to be determined not by the courts but by the practice of persons handling the goods, are you not? A. I think that when the court has to judge this question it will take all things into account

and it might certainly attribute value to the way in which this commodity as a matter of fact has been handled generally and for a very long time.

"I want to point out in this respect as regards the transport of this commodity by Netherlands vessels, I am not talking now about foreign vessels, those ships are under the constant control of the Shipping Inspection, subsequent to art. 10 Schepenwet the regulation of the Schepenbesluit. [895] "For many years already Netherlands ships are carrying naphthalene and crude naphthalene not in gas-tight containers. This must be perfectly well known to the Shipping Inspection and if this would be in direct violation with a strict article like art. 94 section 4, the Shipping Inspection should have jumped in immediately years ago already.

"Q. That is the basis upon which you reach the conclusion that naphthalene is not within the purview of subsection 4 of art. 94? A. Yes. It makes it highly questionable to me at least.

"Q. But it is a matter of your opinion. A. Naturally.

"Q. You agree, do you not, that sub-section 4 of art. 94 contains no such exemption in its own terms? A. No.

"Q. It does not? A. No, it gives very strict rules to be observed.

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"Q. Are you not in effect telling us that [896] shippers and carriers may merely by a continued practice of their own amend or repeal a law or a statute? A. No, I am not. I am only telling you that the functionaries who have been charged to look after continuously that the statute is being strictly observed, evidently very well knowing this practice do not see anything in it, which is against the statute.

"Q. That again is an assumption, is it not? A. There is the simple fact that for years and years and I might say after the other war naphthalene has always been carried in bags right under the eyes of the Shipping Inspection which

it might be taken gives full attention to the question of stowage or wrong stowage."

[897] "Q. By the other war do you mean World War I? A. Yes.

"Q. How old were you at the end of World War I? A. Fourteen years.

"Q. And where were you? A. In Dordrecht, 20 km from here.

"Q. And were you in the naphthalene business? A. I certainly was not at that time.

"Q. Were you in the shipping business? A. No.

"Q. And you were not practicing maritime law, were you? A. Not then.

"Q. You are assuming that the officials charged with supervision of stowage of vessels first had full knowledge of what you say has been the practice, and second have reached a definite determination that that practice does not violate art. 94, is not that so? A. I can only repeat that this practice must be known to them for many years, that they have allowed it through all those years and that at least since 1932 they have the Schepenbesluit which was still valid in June and July 1952.

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[898] "Q. You base your opinion that naphthalene is not within the purview of subsection 4 of art. 94 partly on the fact that it has not been carried in gas-tight containers, is not that so? A. Only partly. As I explained to you I base it on the one side on the common practice as to carriage of this commodity and on the other side on the attitude taken by the Shipping Inspection towards this practice.

"Q. And that attitude you ascertain merely by observing that the Shipping Inspectorate fails to interfere with the practice? A. No, not only that, I won't say it fails to interfere because then you assume that it should interfere.

"Q. Because it does not interfere? A. It does not interfere and has not issued any particular supplementary regulation regarding the carriage of this stuff.

"Q. And when you say 'has not issued,' you mean [899] there has not been published in the Staatscourant, do you not? A. There is no regulation on this subject.

"Q. Let's not get ahead of ourselves. A. Not only that, but no regulation has been brought to common notice in any other way.

"Q. What other ways might there be? A. It could have happened—I won't say it is right—by circular letter. I know when there was the question of the transport of mud coal the Shipping Inspector gave out a Notice to Shipping in the ordinary way in the Staatscourant. But he also wrote and sent a special letter to one of the companies he knew was transporting this commodity, warning them. I know one thing, and I checked this at the Association of Netherlands Shipowners, that there is not any intimation from the side of the Inspector General of Shipping as regards carriage of naphthalene.

"Q. You have found it so in your experience? A. Certainly.

"Q. But you would not classify it as an official source of information, would you? A. I think that information of this kind would have a very decisive value before a Dutch court, that [900] is all I can say.

"Q. That is not an answer to my question. A. If you mean by 'official' a public body, I say you are right.

"Q. You told us that the rule given in sub-section 4 of art. 94 is strict and clear, and that contains no exceptions, does it? A. No. I might amplify by saying that it is written in the imperative form.

"Q. Dealing with the situation envisaged in art. 123 permitting exemptions under certain circumstances, there is no limit in the article itself to the number of occasions on which an exemption can be granted, is there? A. The article talks

of 'buzondere omstandigheden', which clearly shows that it is not meant for ordinary or regular events, only for signal events.

"Q. What I say, Doctor, is that the article does not put a specific numerical limit on the number of exemptions, does it? A. No.

"Q. In theory, if particular special circumstances continued for a long time, a very large number of exemptions could be granted under that article, could they not? A. No, I do not think that is in the meaning of [901] this article. The wording of this article clearly shows it is only meant for very special signal events and not for something which is happening as a matter of fact regularly and is therefore ordinary. I want to point out to you in this respect that this dispensation can only be given either by the Queen, which in itself already shows how rare it is, or by the Chief Inspector of Shipping, acting in her name. If, therefore, such disposition would exist, it certainly should be found in writing.

"Q. And when you say Chief Inspector of Shipping will you give me his Dutch title, please? A. Inspecteur-Generaal voor de Scheepvaart."——

Mr. Longley: Which, translated here meant Inspector General of Shipping.

"Q. You told us that if naphthalene were not within the purview of sub-section 4 of art. 94, no Government official could issue any regulations concerning it, is that correct? A. Not the supplementary regulations mentioned in art. 94.

"Q. What other regulations might be issued and by whom? A. No other.

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[902] "Q. Sub-section 13 of art. 94 and its successor sub-section 15 of art. 99 together have been in existence since 1939? A. Yes.

"Q. And in the 16 years since sub-section 13 of art. 94 first came into force this book 'Dangerous Car- [903] goes has been in process of preparation, is that correct? A. They told me.

"Q. In any event, although authorized by Section 13, so far as you know, no such book has yet been published? A. I should not put it this way. The minister has not been authorized to publish this book, he has been ordered to do so, and he has not yet done it.

"Q. And then in that whole period of sixteen years there have been in your view no regulations in effect concerning the transportation of dangerous cargoes? A. Yes, there has been one. I mentioned this already to you. It is the 1952 regulation regarding the marking of dangerous cargo. But you should keep well apart the supplementary regulations which can only be given by the Inspector General of Shipping, and this book which the minister has to issue and as a matter of fact the 1952 Notice to Shipping regarding dangerous cargo is from the Inspector General of Shipping.

"Q. Well, then, despite the fact that the book which the minister has been ordered to publish has not yet been published, am I correct that since 1939 at least there has been in the Inspector General of Shipping the [904] power to issue so called supplementary regulations governing the transportation of dangerous goods? A. Certainly, you will find it in section 11A, Art. 94 of the old Schepenbesluit.

"Q. The one in effect in July 1952? A. Yes.

"Q. And provided that the Inspector General proceeds in accordance with the law, he could have at any time within that period since 1939 made valid binding regulations for the transportation of naphthalene? A. If this would be dangerous cargo in accordance with art. 94 subsection 4.

"Q. Then we come down to this, don't we, Doctor, that the basis for your opinion that in July 1952 there was no regulation in effect governing the stowage and transportation of naphthalene is simply that you have not found any

published in the Staatscourant or in a Notice to Shipping, or in a circular letter? A. Or in whatever other way.

"Q. What do you mean by 'whatever other way'? A. I told you already it might have been by circular letter, however that would not have been how it should have been, because in accordance with the decree of December 18, 1813 number 6 there was instituted the Nederlandse [905] Staatscourant especially to publish all decrees, nominations and information by the ministers and by all national boards and functionaries, civil or judicial, which they will bring to public notice.

"Q. You mentioned circular letters. A. Yes, because I discovered in this one case that the Inspector General not only published in the ordinary way in the Nederlandshe Staatscourant but also wrote separate letters.

"Q. What effect do you attribute to the separate letter? A. I don't think that in itself would be sufficient to give a regulation binding force. It is only meant in my opinion to specially draw the interest of the parties interested to the fact that such regulations have been published.

"Q. Suppose, Doctor, that there were only one subject of the Kingdom of the Netherlands interested in a particular subject. Would you not say that that one subject who received a letter such as you have mentioned, was properly put on notice? A. No. I still in this very hypothetical case would persist in publication in the Staatscourant.

[906] "Q. But you would not hold that to be a circular letter within your definition. The letter has to go to more than one party if only one party were interested, would it not? A. A circular letter is always meant for more than one man. But I explained already to you that such a letter would never bring about binding force to a regulation.

"Q. To go at it another way, still using the same hypothesis that only one Dutch national has any interest in the particular subject, would you feel that that Dutch national who received a letter from the Inspector General of Ship-

ping was justified in ignoring it, because he could not find that it had been published in the Staatscourant? A. This letter would oblige him probably to look for this publication. It all depends on the contents of the letter. I don't know how far you will go. It might have been that the Inspector General of Shipping simply writes 'Dear Sir, I want to draw your attention to such and such a publication which you can find in the Staatscourant No. So and so.'

"Q. Suppose, Doctor, instead of that and on the same hypothesis, the letter said 'I want to draw to your [907] attention that it is prohibited to do such and such.' A. No. I would not take this. Certainly not.

"Q. And by 'I would not take this,' you mean the recipient of the letter might ignore it with impunity? A. I would simply answer that I had nothing to do with such information.

"Q. Now the Staatscourant I take it is a legal newspaper? A. Yes, in a way, yes.

"Q. By that I mean it is not such a newspaper as one buys on the newstand on the way home after work for ordinary reading matter. A. No, not quite.

"Q. Is its circulation, if you know, restricted largely to lawyers? A. I should not say largely to lawyers, certainly not. There are all kinds of bodies, boards and organizations which are subscribing to it.

"Q. And what sort of bodies are they? A. It differs. It can be as regards building, an organization of builders of houses who must know every rule and regulation which is published and affects its members, and in the same way an association of underwriters can be subscribing to it, shipbuilders, anybody who wants [908] to know exactly what is going on and how to protect the interests of their members surely will subscribe to the Staatscourant, in order to know which regulations appear.

"Q. You mean then that in addition to lawyers, trade and professional organizations also subscribe to the paper. The general public does not, does it? A. No.

"Q. And yet you told us that that was the means adopted in the Netherlands to give general notice of the existence of a regulation. A. Yes.

"Q. And that, I take it, in your opinion is the only lawful way in which to give general notice of a regulation. A. Yes. I mean this, a regulation which should be published in the Staatscourant, because you know apart from this there is also the Staatsblad.

"Q. Yes. I should have said, Doctor, that in your opinion publication in either the Staatsblad or the Staatscourant is in your opinion required to give validity to a regulation? A. Yes.

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[915] * * *: This is Captain C. A. W. Bos, and * * *

"Q. Captain Bos, will you tell us where your residence is? A. In Rotterdam.

"Q. And you are a Dutch citizen? A. Yes, sir.

"Q. By whom are you now employed? A. By Holland-America Lines.

"Q. For how many years have you been employed by Holland-America Line? A. For 28 years.

"Q. And during that period of 28 years will you tell us in what capacity or capacities you have been employed? A. First as an apprentice officer, then fourth, third, second and chief officer, and after that inspector of the Nautical Department and now I am chief of the Nautical Department.

"Q. How many years did you serve on vessels of the Holland-America Line? A. Twelve or thirteen years.

"Q. And then after that your position was changed [916] to inspector? A. Inspector of the Nautical Department.

"Q. How many years were you inspector in the Nautical Department? A. Twelve years, from 1940 to 1951.

Deposition of Captain C. A. W. Bos

"Q. Will you tell us in a general way what the duties of an inspector of the Nautical Department were? A. In the first place to take care that the ships are seaworthy when they sail from the home ports and the other ports. You take care of the crews, of the ships, a. s. o."

Mr. Pyne: That means "and so forth." It is their abbreviation for "etc.", a. s. o.

"Q. Does the inspection as far as seaworthiness is concerned, include the stowage of cargoes? A. Yes.

"Q. And in your present capacity of chief of the Nautical Department, what are your duties? A. I don't do that myself, but it belongs to my department. Loading and discharging of ships. General supervision is my competence.

"Q. As to your sea service, on what type of vessels did you serve and in what capacities? A. All ships were above the 6,000 tons, seagoing [917] vessels.

"Q. Were you an ordinary sailor? A. I served only as an officer.

"Q. Do you hold any license, and if so what license? A. As chief officer, but there is not a master ticket in Holland.

"Q. How long have you had the master license? A. Since 1944, eleven years."

Mr. Pyne: Where he says "there is not a master ticket in Holland," that is another stenographic error. It should read "There is now a master ticket in Holland."

"Q. How long have you had the master license? A. Since 1944, eleven years.

"Q. Has all of your sea service been on Holland-America Line vessels? A. About half a year on the Emzeteo Line, the company from Holland to the Mediterranean, in 1931.

[918] "Q. Did the vessels on which you served at sea carry naphthalene? A. The H. A. L. vessels carry naphthalene."

Mr. Pyne: Again the stenographer is abbreviating. The witness said Holland America Line—the Holland America Line vessels carried naphthalene.

"Q. And did the vessels with which you were connected in your capacity as inspector for the Holland America Line carry naphthalene? A. Yes.

"Q. And are they still carrying naphthalene? A. Yes.

"Q. While you were at sea and on the vessels on which you served, can you tell us how and where the naphthalene was stowed or carried, and I am speaking of crude naphthalene in bags particularly. A. It was always stowed on deck on the foreship and the aftership, never under deck.

"Q. With respect to whether or not it had any cover, what was the situation? A. When I served on the ships it was never covered.

"Q. What was the situation in that respect with the manner and place of stowage during your period of service as an inspector? [919] A. About six years ago, it may be five or seven years, some of the shippers asked to cover it up against rain or sea water, so after that time they covered it up, they don't wrap it all up.

"Q. Will you explain a little more fully and precisely what you mean by that? A. It is not all covered, only on the top side for rain water. When you wrap it up it is all underneath.

"Q. And that was done in such instances as when the shipper requested it? A. Yes.

"Q. In the absence of such request of the shipper, what is and was the situation? A. Well, it was that we did not cover it up when the shipper did not ask for it, but the last one or two years we mostly cover it up.

Deposition of Captain C. A. W. Bos

"Q. Was there any other reason beside or in addition to the shipper's request which caused you in the Holland America Line to cover in the manner you stated? A. No, sir.

"Q. Was the safety of the ship and the cargo a factor which caused you to change the method of [920] stowage so as to cover it? A. No, sir.

"Q. Do you know or have you ever heard of any rule or regulation, royal decree, act or other law in the Netherlands which specifically refers by name to the loading or stowage of naphthalene?"

(• • • objection argued and overruled • • •)

[922] A. I never heard about it.

"Q. To your knowledge or to the best of your information was there in June or July 1952 any rule, regulation, royal decree, act or other law in force and effect in the Netherlands which specifically referred to or mentioned naphthalene by name?"

(• • • objection argued and overruled • • •)

[923a] A. No, sir.

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[924] "Q. Can you give us any rough general idea of how often during firstly your sea-service, whether it was often or rarely, whether there were a large number of voyages in which naphthalene was carried on the vessels on which you served? A. Before the war nearly on every trip we had naphthalene on deck.

"Q. And approximately either by month, year or any way you can give it, can you tell us how many trips you did make? A. I think half of the trips. I made about 20/30 trips to ports on the East Coast of the U. S.

Deposition of Captain C. A. W. Bos

"Q. In the same way can you roughly give us an idea or estimate of how many vessels carried naphthalene during the period of your service as inspector for the H. A. L.?" (Holland America Line)? A. No, I can't answer that. Quite a lot.

"Q. And of the quite a lot, is there any way of estimating approximately how many of them would carry naphthalene stowed as you mentioned on deck? A. More than half.

"Q. Are you familiar or were you familiar with, did you ever see the motor vessel Black Gull? [925] A. No, I don't know I have ever seen it.

"Q. Did you ever hear of a fire which occurred on the Black Gull at sea in the month of July 1952? A. I read it in the newspapers.

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"Q. Will you tell us whether or not in your experience the carriage of crude naphthalene in bags piled on deck of a vessel with dunnage eratings placed only along the bulwarks, which keeps the freeing [926] ports open and with the bags held in place by rope nets, but not otherwise covered, such a stowage and method of transportation is a usual customary one."

(• • • objection made and withdrawn • • •)

"Q. Is such a method of stowage and carriage a usual and customary one? A. Yes.

"Q. Is such a method of stowage and carriage of naphthalene in your opinion a good and proper method? A. A proper method."

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Fritjov Andersen—For Petitioner—Direct

[927] FRITJOV ANDERSEN, previously sworn, called on behalf of the Petitioner, testified [928] through the interpreter as follows:

Direct examination by Mr. Pyne:

Q. Captain Andersen, I believe you told us that you are now the master of the motor tanker Tank Princess. A. (In English) Yes, sir.

Q. You have been temporarily relieved of command to come here to testify? A. Yes.

Q. And where did you leave the motor tanker Tank Princess to come here? A. At Singapore January 28th.

Q. What in total number of years has been your sea service, both as a sailor or an officer? A. I commenced to sail in 1922 and became port officer in 1927, and sailed as third, second and chief officer until 1948, with the exception of during the war and the time that I attended maritime school and vacations.

Q. How long have you had or when did you first get a mate's license? A. 1927.

Q. And you presently have a master's license? A. Yes.

Q. When did you first get your master's license? [929] A. 1946.

Q. And all those licenses have been Norwegian licenses? A. Yes.

Q. And on what type of vessels have you served as an officer, whether mate or master? A. Always on general cargo ships except during the last two years when I have been master of a tanker.

Q. And that is the tanker called the Tank Princess? A. Yes.

Q. Is she a vessel managed by Sigurd Herlofsen Company of Oslo? A. Yes.

Q. Now, during you service as mate or master, how long have you been in total number of years on vessels in Black Diamond Corporation trade? A. I have been master in ships sailing for the Black Diamond since 1949.

Q. Will you name the ships on which you served in the Black Diamond trade? A. Black Condor, Black Gull, Black Heron.

Q. Three of them? A. Yes.

Q. Can you tell us approximately or accurately, whichever you can, how many trips between European ports and the United States you made on those three Black Diamond vessels? [930] A. I think it should be about 24.

Q. And on those trips, on how many of them was naphthalene carried on deck? A. Between 15 and 20.

Q. I believe you have told us previously, but I am not sure, when you joined the Black Gull. A. I went on board the Black Gull May 22, 1952.

Q. Had you previously, before that, served on the Black Gull? A. No.

Q. When you boarded the Black Gull did you make any inspection of the vessel, and, if so, what? A. Yes.

Q. Now, what did you do? A. I went through the cabins, the hull, midshiphouse, and later when the ship was ready for sea—I went through all the rooms in the midshiphouse, the poop, then later when the ship was ready for sea I examined the ship further.

Q. When you say you later "examined the ship further," when was that and what did you do? A. After the ship was discharged in the U. S. A.—in the United States.

Q. When you first joined the Black Gull, where was she? [931] A. She was lying in Rotterdam.

Q. Was she loaded or light? A. She was loaded.

Q. Did that have anything to do with the inspection you made when you first joined her? A. Yes, because I examined the ship later in the holds, when she was empty.

Q. On those inspections and examinations did they, taken together, cover the entire vessel? A. Yes.

Q. And what condition did you find the vessel in as to hull and equipment? A. I found the ship in good order.

Q. Did that cover both hull and equipment and all parts of it?

The Interpreter: Yes, he said that before.

Q. The log books of the Black Gull have already been put in evidence, and I believe that you identified them. A. Yes.

Q. That is, the deck log books. A. Yes.

Q. At the time of the fire on the Black Gull, what other ship's papers were on board the vessel? [932] A. All the certificates belonging to the ship.

Q. Will you name what they were, as best you can recall them? A. International Loadline Certificate, Trade certificate, certificate of nationality, radio safety certificate, medicine certificate, rat certificate.

Q. Would a rat certificate be something like a health certificate?

The Interpreter: No, no——

Mr. Pyne: Let the witness testify.

A. In one way—fumigation certificate.

Q. Are these certificates and papers that you have already mentioned issued by the Norwegian Ship Control, a Government agency? A. Yes, but we also had the Panama and Suez Canal certificates.

Mr. Pyne: I did not get that.

(Record read.)

Q. Did she have a classification certificate on board? A. Yes.

Q. From what society and in what class? A. The Norwegian Veritas Class 1, A-1.

Q. Did she have a government issue specification issued for the crew? [933] A. Yes.

Q. Were there, when you left the vessel at the time of the fire, any passengers' tickets on board? A. Yes.

Q. Now, what became of all these ship's papers that you have mentioned and the passengers' tickets? A. They remained on board.

Q. I will show you what has already been marked as Petitioners' Exhibit J and ask you if that is a correct and true copy of the crew specifications which were on board the vessel (handing to witness). A. That is a copy of same.

Q. How many total number, including yourself, were on board the Black Gull on the voyage from Rotterdam, leaving Rotterdam July 10, 1952—crew only I am asking you now. A. Forty.

Q. And how many passengers were there? A. Nine.

Q. And what were the total passenger accommodations? A. Ten.

Q. Except for the 40 members of the crew and the 9 passengers, was there anybody else on board the Black Gull on that voyage? [934] A. We were 49 all together.

Q. Will you tell us whether or not the Black Gull had any fire-fighting equipment, and, if so, what equipment? A. We had fire hoses and foam fire extinguishers, and CO_2 gas for the cargo holds.

Q. That is carbon dioxide gas? A. Yes.

Q. Did she have any fire-detecting or smoke-detecting equipment? A. We had a smoke detector.

Q. Will you tell us what that is, what type it was, where it was and how it worked? A. The apparatus was placed in the wheelhouse with tubes into every cargo hold.

Q. How about the 'tween-decks? A. Also for the shelter deck.

Q. Will you explain how that apparatus worked, what it did? A. There was a fan sucking the air from the various cargo holds, and if there was any smoke, that would show in the tubes in the wheelhouse.

Q. Was that apparatus in good working order and condition? [935] A. Yes.

Q. Now, you mentioned fire hoses. Were there any hydrants or hose connections on the deck or decks of the Black Gull, and, if so, where were they? A. There was a fire line on the starboard side on the foredeck, there was one connection on the forecastle head, and three on the foredeck; on the after deck the fire line was also running along the starboard side with three couplings on the deck and one on the poop; furthermore there were two couplings on the boat deck and two on the lower bridge.

Q. Have you completed them all now? A. Yes.

Q. Did you tell us on how many voyages you made in Black Gull's services, how many of the voyages between Europe and the United States that naphthalene in bags was carried? A. That was the second voyage that I was on board the Black Gull that we carried naphthalene.

Q. But you have served on other vessels in Black Diamond service? A. I made two voyages with the Black Gull and we had naphthalene on both voyages.

Q. But did you make voyages on any other vessels [936] than the Black Gull when naphthalene was carried? A. I was on board the Black Condor since 1949, and except for four months when I was home on vacation—that is, until I went on board the Black Gull.

Q. Well, all told on any and all Black Diamond vessels, what I want to know is the total number, approximately or accurately, if you know it, of voyages on which naphthalene was carried in Black Diamond service on any vessel. A. As I said earlier, it will be between 15 and 20.

Q. Now, you have already, when you were called here before in the case for the cargo claimants, testified to the manner in which the Black Gull naphthalene cargo was stowed, have you not? A. Yes.

Q. How did the stowage on these other 15 to 20 voyages of Black Diamond vessels of the naphthalene compare with the stowage of the naphthalene on the Black Gull? A. It was stowed exactly the same way.

Fritjov Andersen—For Petitioner—Direct

Q. There has been some discussion here, and I think it was in your testimony, as to the cargo that was in the No. 4 'tween-decks. Will you look at this stowage plan (handing to witness)

[937] (Witness examines)

Q. Was there any cargo in No. 4 'tween-decks? A. Yes.

Q. What was it? A. There were 100 casks of some kind of brandy.

Q. That brandy was then in casks? A. Yes.

Q. When you previously were asked the question, through inadvertent risreading of the stowage plan, it was referred to as "cases." What is correct? A. I don't believe that I said "cases" but "casks" are right.

Q. You did not say "cases," but the question as put to you included the word "casks" and your answer, in your answer you did not pick up the difference. I just wanted to straighten that out.

Now, during the voyage after Rotterdam to the United States, was any inspection of any kind made of the cargo on the stowage? A. We saw all the cargo on the deck all the time, and rounds were made on the deck all the time—that is every day.

Q. Who made the inspections? A. The chief officer, and I was also around.

[938] Q. And what was done on those inspections, how were they inspected? A. We saw that the cargo was good and that the lashings were in good order.

Q. I believe you have already testified, in fact I know you have, to the temperatures recorded in the log book and taken in the shade outside the pilothouse; is that correct? A. Yes, the temperatures were taken in the shade outside of the wheelhouse.

Q. Approximately how would those temperatures compare in your experience with the temperatures on the decks, and particularly on the deck where the cargo was stowed?

A. I never took any temperatures down on the deck, but I should think that in the sun it would be a little warmer.

Q. When you say "a little," have you any experience that would guide you on that, and how much do you mean by "a little"? A. I never have taken anything and compared it.

Q. Coming back to the night of July 18, 1952, that was the night of the captain's dinner, was it not? A. Yes.

[939] Q. And did you leave the captain's dinner for any purpose and return? A. I was informed that we were going to pass Nantucket Lightship, and then I went up on the bridge.

Q. Is it a usual routine matter for you to go to the bridge in passing any lighthouse or mark of that kind? A. Yes, I made it as a rule always to be present when we passed certain points.

Q. Coming to the night of the fire, when did you first hear of any fire, and where were you? A. A little while after 11 o'clock at night.

Q. And where were you when you learned of it? A. I was on the way out from my room, my cabin.

Q. Will you explain where your room was with respect to the navigation bridge or wheelhouse? A. My cabin was on the lower bridge underneath the navigating bridge.

Q. I believe that is shown, is it not, Captain, on the ship's plan? Do you want to look at the plan? A. Yes, it is shown on the plan of the ship.

Q. How did you learn of the fire? A. I was advised by the third officer.

Q. And what did you do? [940] A. I ran, together with the third officer, out on the sun deck. I ran out on the lower bridge and from there onto the sun deck, and had a quick look as to where the fire was, and from there I ran up on the bridge, and ordered the man at the helm, at the wheel, to put the helm hard aport.

Q. Captain, you said you went out on the lower bridge. On what level with respect to the deck of your cabin or

your quarters is the deck of the lower bridge? A. It was on the same level.

Q. And this sun deck that you ran out on, where is that, the level of that deck, with respect to the level of the lower bridge? A. The sun deck is a continuation of the lower bridge further aft.

Q. Now, you say you took a look from the sun deck at the fire. Tell us what you then saw. A. I saw a small flame and some dark smoke.

Q. Did you see and could you tell where that smoke and flame were, or were coming from? A. I didn't localize it. I just looked down and ran up on the bridge.

Q. How was the engine telegraph when you got to the [941] bridge? A. Full speed ahead.

Q. And do you know, or can you tell us, what wind there was, if any, and from what direction with respect to the Black Gull did it come? A. It was a light wind in on the port bow, about a couple of points.

Q. You say that you ordered hard aport on the helm. A. Yes.

Q. Were any other orders given at that time by you or by anybody else, and what were they? A. I did about three things at once: Stand by with the engine, the pipe signal with the whistle, put the engines at slow speed on the telegraph.

Q. Before that hard port order, do you know what the vessel's course was? A. It was straight west.

Q. What change of course was made under the hard aport order? A. I changed course about 90 degrees.

Q. What was the purpose or reason for that change of course? A. With the ship's course to begin with the smoke from the fire went directly aft; with the change [942] in the ship's course the smoke went over to port.

Q. It brought the wind on the starboard side of the vessel; is that it? A. Yes, brought the wind in abreast of the starboard side.

Q. And that tended to carry the smoke away from the vessel, off to portside; is that it? A. Yes.

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[943] Q. Captain Andersen, on board the Black Gull on this voyage did you have a copy of the vessel's charter? A. Yes.

Q. You were telling us yesterday about the stowage of the naphthalene and you testified that the stowage was examined during the voyage, and you also said that you yourself and the chief officer attended those examinations. I will ask you if you will tell us with respect to those bags of naphthalene as they were stowed what their appearance was, that is, whether they were a solid stow and what they looked like? A. The bags looked as always with naphthalene cargoes as if they had been used before.

Q. That is, speaking of the condition of the bags themselves that you are answering? A. Yes.

Q. Will you describe the appearance of the bags [944] themselves? A. The bags looked as they had looked before, and they appeared to have been exposed to rain and sun, and they were also stained.

Q. Can you tell us whether they were new or old or used bags, or secondhand? A. They looked as if they had been used before.

Q. I asked you, Captain, about the appearance of the bags in the stow as they lay on deck, and whether or not they appeared to be a solid stow. A. It was a tight stowage, compact stowage.

Q. Were there any openings between the bags on the top and the sides? A. No, the bags were stowed tightly together.

Q. Will you tell us, Captain, the location, and if you can by number, of the cabins, of the passengers' cabins, what deck or decks, or bridge, or what part of the vessel each cabin is on, and if you can tell us by number, tell us.

Let me put it this way: can you on Libelants' Exhibit 19 (indicating), point out the location of the passenger cabins, and if so, point them out by number. Maybe you could do that in a different colored pencil and it would be easier. A. On the lower bridge there were two passenger [945] accommodations, Nos. 1 and 2, and in the fore part of the boat deck there were three passenger cabins, one at the corner there just outside the smoking room, and further aft in the alleyway there were two others. These numbers correspond with the numbers on the rooms.

Q. That is, the numbers that you have written in in red pencil? A. Yes.

Q. They correspond with the numbers on the cabin doors of the rooms? A. That is right.

Q. Can you recall where the particular passengers were, which passenger occupied which cabin? A. No, but the ladies were always placed in the cabins which were nearest to the dining room.

Q. By number, as you have put them on, will you tell us the numbers of those cabins? A. Numbers 3, 4 and 5.

Q. Did you ever yourself go into those cabins? A. Yes.

[946] Q. When did you last go into them? A. In Europe.

Q. Well, when- I asked when—the time. A. Before the passengers came on board.

Q. Are you meaning before they came on board for this voyage leaving July 10, 1952? A. Yes, sometime before that.

Q. How long before is what I mean. A. It may have been in Antwerp or Rotterdam.

Q. But before this voyage, this sailing? A. Yes.

Q. Now, at that time would you tell us whether or not there were any signs in those cabins? A. Yes, there were two signs.

Q. Were there two signs in all the cabins or only some of them? A. Yes.

Q. There were two in all cabins? A. Yes.

Q. Where in the cabins were those signs located? A. They were placed above the table and over the entrance door—at the side of the entrance door.

Q. What was the substance or content of those signs? A. One of the signs stated the boat to which the passenger belonged and where the lifebelts were [947] placed, and when the meals were in the dining room, and at the same time stated that the ship was not a passenger ship, there would be limited service but that the steward would serve them up til 10 o'clock. At the same time the passengers were asked not to smoke in the dining room.

Q. Have you told us the content of both of those signs now? A. That is only one of them.

(In English) "Do not throw away any burning matches, cigarettes, cigar butts, out of the porthole or over the side."

Q. Have you now completed the substance or content of these signs?

Mr. Pyne: Mr. Rein has just told me that the first part of the first answer given in Norwegian had not been translated.

May I ask that the question and answer be read? I do not know what part was omitted. I know there was one part I was going to ask about anyhow.

(Record read)

Mr. Pyne: Mr. Rein says the witness answered the first part in Norwegian and then the witness started and gave the latter part in English, and the [948] Norwegian was not translated.

The Court: He asked the interpreter—it sounded like "Shall I give it in English?" and the interpreter said "Yes, give it in English."

Isn't that true?

The Interpreter: Yes. He asked me if he could give it in English and I said "Yes."

Mr. Pyne: I see.

(The witness speaks to the interpreter.)

The Interpreter: The Captain asked if the first sign was translated into English and I said "Yes."

Q. I did not get or hear what it was in connection with that first sign that you said about lifebelts. Would you please repeat what was on this sign concerning——

The Interpreter: They were told——

Mr. Pyne: Let the witness answer.

(The interpreter speaks with the witness.)

Mr. Pyne: Captain Lynner, will you let me ask the question, please, and then put it to him?

The Interpreter: Yes.

Q. With respect to the first sign you mentioned, you said something about lifebelts. What was on that sign concerning lifebelts? A. I said to the first question that the lifebelts [949] were placed in chests on the boat deck. The first time I said only where the lifebelts were placed.

The Interpreter: On the second answer he says where the lifebelts were placed, in the lifebelt chest on the boat deck.

Q. Now, is there any Norwegian rule or regulation with respect to where lifebelts should be kept? A. Yes, the lifebelts have to be placed in chests at the boats.

Q. What type of lifebelts were those on the Black Gull? A. Cargo lifebelts.

Q. Had they been inspected and passed by the Norwegian Ship Control? A. Yes.

Q. Did you take part or have anything to do with preparing manifests of the cargo? A. No.

Q. Did you have anything to do with bills of lading? A. No.

Q. Except for approving a proposed stowage plan that was shown you did you have anything further to do with stowage plans? A. All the time during the loading of the

ship I conferred with Captain Hollaar and at such times the stowage plan was always there.

[950] Q. But you did not prepare it. A. No.

Q. About how long after the fire started was the starboard lifeboat launched? A. About half an hour.

Q. Now, why had you not ordered the port lifeboat launched? A. Because I had taken the wind on the starboard side and the smoke passed over on the port side.

Q. Well, what did the smoke on the port side have to do with launching or using the port lifeboat? A. If I put the port lifeboat into the water they would have gotten into the smoke right away.

Q. Now, the crew fought the fire first from the after deck, is that so? A. Yes.

Q. And at some time they were forced to go to the boat deck to fight it? A. Yes.

Q. Can you estimate about how long after the fire started that the crew went to the boat deck to fight it? A. About an hour and a half.

Q. And then later they were forced to the forward deck? A. Yes.

[950a] The Court: By the after deck, where they started, did you mean the deck on the poop or was it on the shelter deck?

The Witness: I mean where the deck was placed and that has been previously stated here to be the weather deck.

The Court: Where the deck was placed?

The Witness: Where the cargo was placed.

[951] The Court: I still have not got the decks straight. Is the weather deck and the shelter deck the same?

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The Court: That is the weatherdeck but not the shelterdeck?

The Witness: Yes, it is both the shelterdeck and the weatherdeck.

The Court: That is what I understood.

Mr. Longley: If your Honor please, these navigational terms sort of get mixed up. I don't think that this ship had any shelterdeck.

Mr. Pyne: I think that is right.

Mr. Longley: And Mr. Pyne agrees with me. A shelterdeck is an enclosed opening, except there are openings at the end. This ship did not have any shelter deck, she had a hold, 'tweendeck, and above the 'tweendeck [952] was the maindeck which has been called here the weather deck, and the cargo was on the weatherdeck.

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The Court: I think there is confusion of terms between counsel and the witness. Certainly the witness told us yesterday that the maindeck was not the same as the weatherdeck.

Mr. Pyne: I understand from Captain Lynner also as a matter of technical shipbuilding that may be correct. The open type deck where the cargo is is not technically the main deck, but the deck below that, the enclosed, is technically the main deck. So there has, as your Honor says, been confusion there.

The Court: Does everybody now agree that the [953] naphthalene was stowed on the weather deck?

Mr. Pyne: Yes, your Honor.

Mr. Longley: Yes.

Mr. Abberley: Yes.

The Court: And the crew started to fight the fire from the weather deck, is that correct? Will you ask the witness that.

The Witness (through interpreter): Yes.

By Mr. Pyne:

Q. And it was from that after weather deck that the crew at the time you stated, I think you said about and hour and a half, were driven to the boat deck? A. Yes.

The Interpreter: Mr. Pyne, the master asks if he can explain the decks.

Mr. Pyne: If his Honor wants it, it is all right with me for him to explain anything. But I think we have it straightened out for our record.

The Court: It is his language we are dealing with, and I think he ought to do it.

Mr. Pyne: By all means.

The Interpreter: The master says he will from now on call the deck where the naphthalene was placed as the weather deck.

[954] Q. There came a time, Captain, when all of the crew and yourself left the Black Gull? A. Yes.

Q. Could you fix that time in any way? A. The only way I can do it is by the time when we arrived on the Gripsholm.

Q. What time was that? A. About four o'clock.

Q. And about how long after you got off the Black Gull did you get on the Gripsholm? A. About half an hour to three-quarters of an hour.

Q. While you were still on board the Black Gull was an anchor dropped? A. After we had been forced down to the fore deck, I let go the starboard anchor.

Q. What was the purpose of that; for what reason? A. In order to keep the ship up against the wind and in order not to let the ship drift around.

Q. The first day you testified here you gave the latitude and longitude of the place of the fire. A. Yes.

Q. Can you tell us how far or approximately how far that place was from the nearest U. S. coast line? A. If I had a chart I could show you, but I be-[955]lieve it was about fifty to sixty miles.

The Court: Captain, when you fought the fire from the forward deck were you on the weather deck or were you on the forecastle?

The Witness: We were on the weather deck.

Q. In fighting the fire on the weather deck what was used to fight it? A. We used our fire hoses and foam extinguishing apparatus.

Q. Did the fire hoses continue in operation the whole time you were there? A. Yes, all the time we were on the after deck, and from the boat deck; and we also had one hose working when we were on the fore deck.

Q. Did you use any buckets on the fore deck? A. When the water gave out we used buckets on top of the naphthalene bags at No. 3 hatch.

Q. The first day you testified you were asked if there were electrical connections in No. 4 tweendecks, and you said no. What did you understand and mean by electrical connections? A. I meant that there were no contacts there were no contacts there to which we could connect other electric wires or fuses or lights.

[956] Mr. Pyne: The witness indicates with his hands.

The Interpreter: He means a contact.

Mr. Pyne: Talking about a switch, Captain Lynner?

The Witness: Yes, or switches.

The Court: Throw on and off a switch, is that it?

The Interpreter: Yes.

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[957] Q. When you testified the first day here, in answer to a question from his Honor, you stated that in your opinion it would be impossible to comply with the Coast Guard regulations.

I would ask you, please, to explain fully what you meant. A. I would like to have the Coast Guard regulations.

Q. We can either use the one in evidence, or here is the identical full book rather than the photostats that are in evidence.

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[958] A. Yes. The Coast Guard regulations say "on deck protected," and it further states that a ticles being carried on the open decks should be protected against the elements by structural erections or against the rays of the sun by sun roofs or the like.

Mr. Longley: By what?

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The Interpreter: The witness adds "awnings."

A. (Continuing) As heavy weather must always be expected in the North Atlantic——

(The interpreter speaks with the witness.)

The Interpreter: I said "Just use the word 'awnings' "—he used it himself.

A. (Continuing) And as napthalene should, according to these regulations, be protected against rays of the sun, it would have to be by means of awnings [959] or dunnaging. As I already stated, you must always expect heavy weather in the North Atlantic, it will be impossible to keep such sun roofs. They would be torn down and they would also present a danger to the other cargo and to the tarpaulins on top of the hatches.

The same would be the case if dunnage were put on top of the bags, and as the cargo is supposed to be ventilated, the only way I could see that the cargo could be protected against the rays of the sun would be by awnings. If the cargo were to be protected by tarpaulins, ventilation would be prevented and the tarpaulins would also be exposed to wind and weather and on such large areas would be torn away.

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Fritjov Andersen—For Petitioner—Cross

[960] Q. I think you told us that the starboard lifeboat was put in the water about one-half hour after the fire broke out; is that correct? A. Yes.

[961] Q. Then it is true, is it not, that within one-half hour after this fire broke out you were satisfied that the lives of your passengers were in danger? A. No.

Q. Why did you have the passengers—or I had better say, weren't the passengers put in the starboard lifeboat before it was put in the water? A. Yes.

Q. Well, why did you have them go in the lifeboat? A. I launched the starboard boat in order to have it ready if the fire should spread, to have it safe—in safety, if the fire should spread, and as I was of the opinion that the passengers—and as I wanted to have the passengers out of the way in case we should have to leave the ship in a hurry, I wanted to have them done right away.

Q. The passengers were safer at that time in the lifeboat than they were on the ship, isn't that so? A. At that time they were just as safe on board the ship but, as I told you, I thought it was better to have them out of the way.

Q. You told us the other day when you testified that you had four streams of water pouring onto the burning naphthalene on the after deck. Do you remember [962] that? A. Yes.

Q. Now you tell us you only had one stream playing water on the burning naphthalene on the forward deck. Why was that? A. The others were left there when the—as the fire spread in such a way that we could not disconnect them.

Q. Three hoses were left on the after deck, you mean, so that they burned up? A. Not on the after deck; the boat deck.

Q. Well, in any event, wherever they were, three hoses burned up and you had only one to play on the burning cargo on the foredeck? A. Yes.

Q. Captain, you took no part yourself in the stowage of this naphthalene either at Antwerp or at Rotterdam, did you? A. I supervised the stowage when I took my rounds on the deck.

Q. How often did you take your rounds on the deck during the stowage of the cargo, Captain? A. That is difficult to say.

Q. Well, you were ashore most of the time when the ship was in port, wern't you, Captain? [963] A. No.

Q. Did you stay on board the ship while the ship was in port at all times at Antwerp and Rotterdam? A. No.

Q. Well, how much time did you spend on the ship while this vessel was in port? A. (In English) It is impossible for me to say.

(To the interpreter) It is impossible for me to say.

Q. Captain, it has been my experience when a ship gets into port the master spends most of his time ashore. That is not true with you? A. No, and that is not—no, it is not true about other captains either.

Q. Well, all right. Now, after the ship sailed, Captain, do I understand that you went down and carefully examined this stow of naphthalene eight or ten times a day, or what did you do? A. No.

Q. Well, what did you do about examining it? A. I had my rounds on the deck every now and then.

Q. What does that mean, "every now and then"? A. That may mean once a day or once every other day.

Q. What was there about this naphthalene that [964] disturbed you, that caused you to make any particular examination of it, Captain? A. There was nothing frightening me, but I always have my rounds like that.

Q. Well, isn't it the truth of the situation, Captain, that as you walked over this ship you glanced at this stow, and

that is all you ever did about it? A. We see a lot when we take our rounds. They are not just glances.

Q. Did you get up on top of this stow and put your hands down between the bags to see that there were no crevices there, Captain? A. No.

Q. Now, some hour or so after the fire broke out you found out there was a fire in No. 4 'tween-deck, did you not? A. That was at a time when the No. 4 hatch covers had come on fire and the covers were fall down to the deck.

Q. Well, was it about an hour or so after the fire broke out, or how long afterward? A. I think a good hour.

Q. And you learned that on the bridge by your smoke detecting apparatus, did you not? [964a] A. I saw that No. 4 hatch was on fire and I saw the smoke on the smoke detector when I was on the bridge.

Q. And that is the first time that your smoke-detecting apparatus had shown you any fire in any under deck compartment, isn't that true? A. The first and only time I saw was smoke from the deck.

[965] Q. It was about an hour after the fire broke out? About? A. Yes.

Q. You have told us that the smoke detecting apparatus consisted of some tubes. They are glass tubes, are they not, up on the bridge, or at least transparent tubes? A. I have not opened it, but the tubes are clear.

Q. And they operate by having a little pump pull air from the various compartments from which those respective tubes lead; isn't that so? A. I would rather say a fan was going there.

Q. You are probably right. And you have on your detector apparatus on your bridge a tube leading to each hold and each 'tweendeck, do you not? A. Yes.

Q. You told us of the signs in the passengers' cabins. A. Yes.

Q. What language were they in? A. English.

Q. You spoke during the course of stowage of comparing with somebody, but I did not get the name. That was Captain Hollaar, was it not? A. Yes.

Q. And it was Captain Hollaar who laid out the stowage and arranged as to where it was to be stowed? [966] A. With my consent, yes.

Q. And Captain Hollaar is here in the courtroom? A. Yes.

Q. Now you have told us that in your opinion it was impossible to comply with the United States Coast Guard regulations in so far as concerns stowage and carriage of naphthalene. A. No.

Q. You did not say that?

The Interpreter: The answer is No.

Q. Do you mean you did not say that? A. I said that as regards carrying of naphthalene on deck it was impossible.

Q. And you are quite right. Why did you carry it on deck then, Captain? A. Because it is allowed to carry naphthalene on deck.

Q. You have told us that you could not comply with United States Coast Guard regulations in the stowage of naphthalene on deck, and I ask you, as you say you could not comply with the regulations, why did you carry naphthalene on deck at all? A. The Coast Guard regulations apply to all waters.

Mr. Longley: I do not quite follow that answer.

[967] The Interpreter: I am asking whether he had completed his answer.

The Witness: I will ask to have the question read again.

(Question read.)

Mr. Longley: May we have a recess at this time, and let the witness think that over, your Honor? He seems to want to give it a little thought.

The Court: Ask the witness whether he wants to do that.

The Witness: Yes.

The Court: The court will take a short recess.

(Short recess.)

Q. Captain, are you now ready to give your answer to the last question I put to you? Do you remember what it is? A. Yes.

Q. All right, let us have it. A. The Coast Guard regulations, as I said, apply to all waters, and the regulation about sun roof will have to be complied with in the hot regions, but in the North Atlantic we do not have such temperatures.

Q. Well, I do not follow what you are saying, Captain, but I want to press that. You knew when this [968] ship sailed that you were carrying naphthalene that violated the United States Coast Guard regulations, did you not?

Mr. Pyne: I object to that, your Honor. I think that is calling directly for a conclusion of law.

Mr. Longley: I am asking for his knowledge.

Mr. Pyne: No, you are asking on a question of law, and I say in the first place it is asking for a conclusion of law, apart from the fact that it is a question of law.

The Court: What difference does this witness's view of the law make, Mr. Longley?

Mr. Longley: His view of the law does not make any difference. Why he stowed it the way he did does make a difference.

The Court: That is not what you asked him.

Mr. Longley: I asked him if he knew.

The Court: Yes.

Mr. Longley: Not what the law was, but that he knew he was carrying it in violation of the law.

The Court: What difference does that make?

Mr. Longley: If your Honor does not want it, I won't press it.

The Court: All right.

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[969] Q. Captain, you have told us the length of time that you served on vessels that served in the Black Diamond service. A. Yes.

Q. Did you receive these letters when you had your ships under Black Diamond service? And I show you these letters heretofore offered as Libelants' Exhibit 38 (handing to witness). A. I am sure I have received the two last ones. I think I have seen the first one, but I am not sure.

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Q. You knew, did you not, Captain, that if tarpaulins were used in connection with the stowage of naphthalene that they would become impregnated with the odor of naphthalene? A. Yes, with the odor of naphthalene.

Q. And therefore the tarpaulins could never be [970] used again except in relation to naphthalene; isn't that so? A. Yes.

Q. And you had received instructions from Black Diamond in connection with the care to be used in connection with rope slings that had been used over a stow of naphthalene; isn't that true? A. Yes.

Q. And that was because the rope slings would become impregnated with the odor of naphthalene when used over the stow? A. Also because these nets were particularly for the use of naphthalene stows.

Q. And you received directions not to use dunnage wood under a deck load of naphthalene because the dunnage wood would become impregnated with the odor of naphthalene, isn't that true? A. I want the question again.

Q. (Question read.) A. Not particularly.

Q. Isn't there a letter there that deals with that, Captain, or is that the letter you did not receive? I am referring to this letter dated May 29, 1951, from Black Diamond Steamship Corporation addressed to all masters, deck officers, domestic and foreign agents, a part [971] of Libelants' Exhibit 38. Didn't you receive a copy of that letter, Captain? A. (Without interpreter) Yes, I did.

Q. And in that letter from the Black Diamond you were told not to place dunnage on the main deck prior to loading on deck naphthalene; isn't that true? A. (Without interpreter) Yes.

Q. And you were directed to stow it directly on the deck; isn't that true? A. Yes.

Q. Then you were told after the discharge of naphthalene all the dunnage is to be collected and set aside on the deck, secured, and later disposed of? A. Yes.

Q. You knew the purpose of that direction, did you not, Captain, is because the dunnage would become impregnated with the odor of naphthalene? A. That was one of the reasons.

Q. What is the other reason? A. The other reason was that naphthalene is stowed as well on the deck as on dunnage wood, if not better.

Q. The Coast Guard regulations, Captain, provide that naphthalene if stowed on deck may be stowed on deck under cover or on deck protected. You knew [972] that, did you not? A. I knew that naphthalene should be stowed on deck protected.

Q. Didn't you also know that the regulations permitted you to stow it on deck under cover? A. By reading the rules you will find that naphthalene shall be protected, not covered.

Q. No, I am not talking about that now, Captain. I say it provides that it may be put under cover, but in any event you had no means on the Black Gull of stowing the amount of naphthalene you were carrying under any superstruc-

ture; isn't that true? A. We had no superstructure of that kind.

Q. And of course you could not stow it in the forecastle? A. No.

Q. Or in the bridge house, or the poop, or a deck house? A. We had no such places.

Q. So the only thing you could do was to carry it on deck? A. Yes.

Q. Out in the open? A. Yes.

Q. Now you say it is impossible to comply with the Coast Guard rules. Reading from the Coast Guard rules, 146.03-34 (b):

> "On deck protected means the articles may be stowed on the open weather deck of a vessel. [973] It is required that dangerous cargoes stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnage."

Do you read English enough to follow that, Captain?

(Interpreted to witness.)

Q. (Continued) I also call to your attention, Captain, provisions of 146.27-6, reading:

> "Protection for On Deck Stowage. Hazardous articles that are permitted stowage on deck in open or on deck protected, may be protected by the use of structural erections, awnings or tarpaulins."

The Interpreter: We have no real equivalent to your word "hazardous."

Mr. Longley: Dangerous.

The Interpreter: No.

Mr. Langley: Use the word "hazardous" then.

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[974] Q. You have told us that no effort was made to cover the naphthalene on the deck of the Black Gull with tarpaulins. A. Yes.

Q. And you have also told us that—— Do you want to add something, Captain? A. Yes. The Coast Guard regulations also say that naphthalene should be well-ventilated, and it cannot be well-ventilated if it is carried under cover.

Q. Well, that doesn't particularly answer my question, Captain, but I may tell you that I find nothing in the Coast Guard regulations providing what you have just said, but they will speak for themselves.

Mr. Longley: (To the interpreter) Will you put my question?

(The interpreter speaks to the witness.)

Q. You have also told us, Captain, that on the masthouse you had a stow of drums of chemicals that you did protect by a tarpaulin.

Mr. Pyne: I object to that, your Honor. The witness didn't say that they were on the masthouse. He said they were on the deck next to the masthouse.

Mr. Longley: No, on top of the masthouse.

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[975] Q. Where were the drums of chemicals stowed? A. The drums of chemicals were stowed forward of the aft midshiphouse mast or along—or against the No. 4 hatch coaming.

Q. And you told us that those drums were protected by tarpaulins. A. Yes.

Q. And those tarpaulins were lashed to stay in place over the drums, were they not? A. Yes.

Q. Why couldn't tarpaulins be lashed over the naphthalene, Captain? A. They could have been lashed, but as I told you before, there would have been no ventilation.

Fritjov Andersen—For Petitioner—Cross

Q. Indeed you lashed tarpaulins over naphthalene, at times, you have told us, Captain? A. Yes.

Q. And you did that because you said one or two of the shippers asked for it? A. Yes.

Q. What did you do about ventilating that naphthalene that was covered with tarpaulins lashed down over it? A. The tarpaulin was put on top hanging down from [976] the sides.

Q. You mean it wasn't lashed? A. It was lashed.

Q. That tarpaulin was not carried off in any bad weather, was it, Captain, when you carried it over the forward deck? A. Yes.

Q. The tarpaulin was carried away? A. It was blown up, or torn up.

Q. That naphthalene, I think you told us before—and you will correct me if I am wrong—when you carried it, you carried it on the forward deck? A. Yes, it was carried on the forward deck. It was small parcels.

Q. Captain, don't we come down to this, that you didn't cover naphthalene with tarpaulins on this voyage of the Black Gull or on prior voyages because it was going to cost the carrier too much? A. No.

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Cross-examination by Mr. Abberley:

Q. Captain, some of the passengers have stated that they were burned while they were in the starboard [977] lifeboat. I am sure that you had a very good reason for keeping the starboard lifeboat tied to the side of the Black Gull. A. Yes.

Q. Was that reason because you only had one lifeboat and you believed you might need that one lifeboat to evacuate the remainder of the crew? A. Yes, in case we should be obliged to leave the ship.

Fritjov Andersen—For Petitioner—Cross

Q. Captain, with respect to the port lifeboat, when the fire first broke out, how far abaft the port lifeboat was the fire, approximately?

(The interpreter speaks with the witness.)

Q. Look at the ship's plan; perhaps you can tell from that. A. (After examining) Approximately 25 feet.

Q. At first, did the fire spread rapidly in a forward direction, going towards the port lifeboat? A. I cannot tell because in the first moments I was fully occupied by managing the ship in order to have the wind in from the starboard side.

Q. How soon after the fire first broke out would you estimate it was when the port lifeboat caught on fire? [978] A. A quarter of an hour to twenty minutes, approximately.

Q. Captain, I understood you to testify that one of the reasons you did not see fit to launch the port lifeboat was because of smoke that was blowing over the port side of the ship, you having brought the wind around on the starboard beam, and I also understood you to say or indicate that you believed you might jeopardize or harm the passengers if you put them in the port lifeboat and lowered it over the side. A. Yes, sir.

Q. Would it not have been possible to lower the port lifeboat without putting the passengers in it? A. Yes.

Mr. Abberley: No more questions.

The Witness: May I go on?

Mr. Abberley: Yes.

The Witness: In any event, I would have to have crew in the boat.

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Harvey Lyngaas—For Petitioner—Direct

[979] HARVEY LYNGAAS, called as a witness on behalf of the Petitioner, • • •

Direct examination by Mr. Pyne:

Q. Mr. Lyngaas, what is your occupation? A. Chief officer.

Q. Of what vessel? A. The Black Eagle.

Q. That vessel is in the Black Diamond Corporation service? A. Yes.

Q. And you were formerly a member of the crew of the Black Gull? A. Yes.

Q. In what capacity? A. I signed on as third mate.

Q. When did you sign on? A. In February, 1949.

Q. Did you remain an officer on the Black Gull from then down til the time of the fire in July 1932? A. Yes.

Q. Before going on the Black Gull did you serve on any other vessels in Black Diamond service? A. No.

Q. While on the Black Gull did you always remain third officer? [980] A. I was promoted in August 1939 to second officer and again to chief officer in 1951.

Q. Do you remember what part of 1951 you became chief officer? A. In April 1951.

Q. And you remained chief officer, then, on the Black Gull until the July 1952 fire? A. Yes.

Q. How long, all told, have you been going to sea? A. I started to go to sea in October 1937.

Q. And when did you first become a licensed officer? A. In 1947.

Q. And what license did you then receive? A. Mate certificate.

Q. Did you later have a master's certificate? A. I got it April 1952.

Q. So at the time of the Black Gull fire you were chief officer on that vessel but held a master's license? A. Yes.

Q. Have you remained in the employ of Sigurd Herlofsen & Company on vessels in Black Diamond service from the time of the fire down to the present? A. Yes.

Q. How many trips all told would you say between [981] European ports and the United States you have made on vessels in Black Diamond service? A. Thirty to 32—I am not quite sure.

Q. And on those voyages can you tell us approximately, or accurately, how many of the vessels carried naphthalene, crude naphthalene in bags? A. They all did.

Q. Did you yourself ever make a complete inspection of the Black Gull all over the vessel? A. Yes.

Q. How often did you do that? A. Every journey after the discharge of the cargo.

Q. When last prior to July 10, 1952, was it that you inspected the vessel all over? A. At Bremen.

Q. That was when she was discharging at Bremen and immediately starting this voyage on which the fire occurred? A. (In English) Yes.

Q. On the Black Gull, as chief officer, did you stand a regular watch? A. Yes.

Q. And what watch did you stand on the navigation bridge chart room—chart house? [982] A. From 4 to 8 a. m. and from 4 to 8 p. m.

Q. While you were on watch on the bridge did you, or could you and did you have a view of the decks of the vessel, both forward and aft? A. Yes.

Q. While you were on watch on the bridge did you remain in one place or did you move about? A. We are moving back and forth.

Q. Back and forth from where to where? A. (In English) From one side——

(Through the interpreter) From one side to the other.

Q. Now, during the voyage of the Black Gull on which this fire occurred, did you make any inspection or inspections of the cargo, and particularly the deck cargo? A. Yes.

Q. Now, would you tell us what inspection or inspections you made, when you made them and what you did? A. I

had one proper inspection round, only concerned with inspecting the cargo every day.

Q. And on that inspection would you tell us what you did in the way of inspection? A. I checked the nets, I checked the lashings by means of which the yacht had been lashed, I checked [983] the scuppers—I went along the bulwark and inspected the scuppers.

Q. Did you make any check of the fastenings of the stowage of naphthalene? A. Yes, I said so.

Q. Do you remember when last, prior to the outbreak of the fire on July 18th, you made such inspections of the cargo? A. That was between 10 and 12 a.m.

Q. On July 18, 1952? A. Yes.

Q. And what condition, generally speaking, did you find the cargo in, particularly the deck cargo? A. Everything was all right, or good order.

Q. Did you see on that inspection the appearance and condition of the stowage of naphthalene on the weather deck, fore and aft? A. The stowage was, if possible, more compact than when we left Rotterdam.

Mr. Longley: What was that?

(Answer read)

Q. I do not understand that answer. Please describe the appearance of that stowage of naphthalene, the top particularly, and the sides.

(The interpreter speaks with the witness.)

[984] The Interpreter: I asked him to repeat the answer because I didn't remember the beginning.

A. The stowage was the same as when we left Rotterdam, but during the voyage the bags will work themselves even closer together than they were at the time when they were stowed so that there were no openings between them.

Q. On the top were there any crevices between the bags on this last inspection? A. No.

Q. On the sides on this last inspection were there any crevices? A. None except those that were made when the cargo was stowed at Rotterdam for shipping water.

Q. Describe, if you will, what those crevices or spaces were and where they were. A. The bottom tier was stowed in such a way that between every third or fourth bag there was an opening, and the bags in this tier were stowed athwartship.

Q. Except for those openings on the bottom tier were there any other openings or crevices anywhere in the stow, top or sides? A. No.

Q. I will show you the log book of the Black Gull, [985] Petitioners' Exhibit E (handing to witness), and ask you whether or not there was any pitching and rolling of the vessel during this last voyage, and, if so, on what dates and watches? A. On the 12th July, on the 4 to 8 watch in the morning, we had some pitching with sprays overdeck and hatches.

On the afternoon watch from 12 to 16 I have written "some pitching."

On the evening watch from 4 to 8 I have written "some pitching."

On the 13th July, from midnight to 4 o'clock, "some pitching with spray over deck and hatches"—that's all.

[986] Q. Did any pitching or rolling of the vessel disturb or move the deck cargo? A. No.

Q. On the inspections of the cargo which you have stated you made daily, did you ever go below decks? May I amend that question, did you ever go below the weather deck? A. I opened hatch No. 4 and was down in the 'tweendecks.

Q. When was that? A. That was the day after we had the last pitching and that has been entered in the log.

Q. And what was the purpose of going down in that No. 4 'tweendecks at that time? A. On each side of the hatch in the 'tweendecks Armagnac was stowed.

Q. Is Armagnac a Cognac brandy? A. Yes.

Harvey Lyngaas—For Petitioner—Direct

Q. Was there anything in the way of cargo or other articles of any kind in the No. 4 'tweendecks besides that brandy? A. There were two slings of dunnage.

Q. And where were they located? A. There were two slings of dunnage, one was placed in the forward part of the hatch, the other in the after part of the hatch.

[987] Q. What condition did you find the casks of cognac brandy in on that occasion? A. In good condition, as they had been stowed at Rotterdam.

Q. Did you at any time enter the passengers' cabins on the Black Gull? A. Yes.

Q. Do you remember when last before the fire you entered any of the passengers' cabins? A. That was at Rotterdam the day before the passengers came on board.

Q. Did you go into one or more than one? A. I was in them all. May I add why I went into them?

Q. Yes. Why did you go there? A. I had assigned one of the crew to paint all the ventilators in the passengers' cabins, and I therefore went into them all to inspect what had been done.

Q. Can you tell us whether or not at that time there were any sign or signs in these cabins? A. There were two.

Q. Two in each cabin, do you mean? A. Two in each cabin, yes.

Q. Can you tell us what these signs stated, or their substance? A. One was concerned about mealtime. On the [988] same sign it was said to which lifeboat each passenger was assigned and where the lifebelts were kept; and there was as far as I remember a request to passengers not to smoke in the dining room. The other was a warning to the passengers not to throw cigarettes or cigars or matches, I don't remember the exact wording, out of the port holes or over the side.

Q. Have you completed to your best recollection the substance of both of those signs? A. Yes.

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[989] Q. At the last session, Mr. Lyngaas, you were telling us about the signs in the passenger cabins. Out on the open decks anywhere on the Black Gull were there any signs relating to smoking? A. May I have the plan of the ship?

Q. Yes or no to that question first. A. Yes.

[990] Q. I will show you—and I am giving the witness now a clean plan with no marks on it, which is a duplicate of the plan already in evidence; they have had so many marks, your Honor, I think we ought to use a clean one now—and I will give you a red pencil and ask you if you will with that pencil mark the location of those signs which you say were on the deck. And put a red cross wherever they were. A. (Witness marking on plan.) One sign on each side of the companionway from the forecastle.

Q. State whether or not those signs on each side of the companionway were on the bulkhead or wall? A. Yes.

Q. Proceed if you will with the others. A. There was one sign here on the masthouse, the fore part; one here in the after part——

Q. Which masthouse are you now marking? A. The forward masthouse between hatch No. 1 and hatch No. 2.

Q. And as you go along will you not only mark but state for the record the places you are marking. A. Then we had one sign here on the masthouse between hatch No. 2 and hatch No. 3, one in the fore part and one in the after part. Then we had one here in the [991] fore part of the midship building; it was in the center of the midship building.

Q. Was it on the bulkhead? A. It was on the bulkhead. Then we had one here on the bulkhead right in front of the entrance from the gangway on the port side, and one likewise on the starboard side. Then we had one on the bulwark here by the boat deck. Then we had one in the fore part of the masthouse on the after deck and one in the after part of that masthouse, and one in the fore part of the poop, in the center.

Q. Was that on the bulkhead? A. Yes. These are all, as far as I can remember.

Q. Did you have anything to do with putting up those signs? A. The second officer and myself painted them together.

Q. Will you tell us how they read, what was stated on them? A. "No Smoking," in English.

Q. And the size of the letters was what? A. About five inches, I think, or 5½ inches.

Q. In height, top to bottom? A. In height.

Q. On this plan I am going to point out to you a structure which is shown on the forward part of the [992] weather deck. Was that structure on the Black Gull on this voyage? A. No.

Q. I will ask you if you will, so we can later identify it, to take this blue pencil and mark that structure that we are now talking about. A. (Witness marks "X" with blue pencil.)

Mr. Pyne: May I offer the diagram as an exhibit, your Honor.

(Marked Petitioner's Exhibit Z in evidence.)

[993] Q. During this voyage on the Black Gull on which the fire occurred, did you at any time ever see any person, passenger or member of the crew or anybody, smoking out in the open on any deck anywhere? A. No.

Q. With respect to the condition of the bags in which the naphthalene was on the deck, will you describe the appearance and condition of those bags as you saw them? A. They were stained and they were second-hand bags.

Q. There has been some testimony here, I think from one or two of the passengers, that at the beginning of the voyage they saw spillage of crystals and naphthalene on the deck, both the forward deck and after deck and in the space or passage between the hatch coamings and the stow of naphthalene. What can you say as to whether or not there was

any spillage of any naphthalene out of the bags at those places?

The Interpreter: May I please have that question read again.

(Question read.)

A. It is correct, there was some spillage of naphthalene because during loading the stevedores will use hooks when handling the bags and it is not to be prevented [994] that some bags will be torn and some naphthalene will come out.

Q. What was done about that, if anything? A. The decks was first swept up and then watered up.

Q. When? A. It was done the next morning. We left Rotterdam at about 11 o'clock p.m., and the next morning the bags were cleaned.

Q. After that was there any other or further spillage out of the bags onto the deck? A. No.

Q. At the last session you stated that you made daily inspections of the cargo and inspected the scuppers. Will you tell us how you inspected the scuppers? A. That was done by walking on top of the stow along the bulwark.

Q. And looking where when you walked on top of the stow? A. Looking down, of course.

Q. That is, between the fences of the bulwarks and the bulwark itself? A. Yes.

Q. Now as to the height of the top of the stow of naphthalene in the bags over the deck, what can you say or do you say as to that? A. Between 5½ and 6 feet.

[995] Q. And where were you when you first learned or heard of the fire? A. I was asleep.

Q. How did you learn of it and what did you do? A. One of the stewardesses who was in the bathroom in the after part of the midship house on the boat deck had discovered the fire and she came and woke me up and told me there was a fire.

Q. Where were you asleep? A. In my sleeping cabin which is in the midship building on the boat deck, on the starboard side in the fore part.

Q. And when you were awakened, where did you go, what did you do? A. I ran across the alleyway and out onto the boat deck on the port side and out on the deck. From there I went on to the bitt and on to the stow.

Q. What bitts did you go on to, which ones—and take the plan, if you will, Petitioner's Exhibit Z, and show us what bitts (handing witness). A. I came down here (indicating), and I went from those bitts on to the stow.

The Court: What is a bitt?

Mr. Pyne: It is a piece——

Q. Oh, what is a bitt?

(Witness speaks to interpreter.)

[996] The Court: Is it like a cleat?

The Interpreter: Well, I don't know that word.

Mr. Pyne: Well, if I may show the Court and counsel, a cleat is shaped like that on the deck (drawing).

Q. Do you want to make a diagram? Make it here (handing paper). A. This is the deck (drawing). On to the deck has been welded a plate (drawing). On this plate two pieces of iron, roughly 10 inches in diameter, in such a way that we can get the rope in here (indicating) and fasten it (drawing).

The Court: They are cylindrical in shape?

The Witness: (In English) Yes.

Mr. Pyne: May we have it for the record, your Honor, that the witness, when he testified, he pointed and said he came down here to this alleyway (indicating), where I will put a pencil line with an arrowhead at the end of it, and that he also pointed to the

bitts that he mentioned, on which I will put a red arrow (drawing), pointing to the bitts (handing to Court).

Q. Can you tell us where the forward end of the stow on the port side alongside of No. 4 hatch, was with respect to the after or second of those two bitts that you have marked? A. The stowage started about one foot aft of the aft piece of the bitts.

[997] Q. On that occasion that you got on top of the stow, will you describe what you saw? A. I saw there was a fire in some of the bags, approximately in the middle of the stow, about abreast or a little forward of the center of hatch No. 4.

Q. Now at that time did you see either the side of the stow, either the side near the hatch coaming or the side near the bulwarks? A. No, not then.

Q. Well, tell us what you did from that point on. A. As soon as I had got onto the stow, the crew were coming from the poop, from the poop house. I told them to connect the hoses on the deck and one was to run down into the engine room and order water and good pressure.

Q. That is, you ordered that man to do that? A. (In English) Yes.

Q. What then did you do, where did you go? A. I then ran back onto the boat deck, took out the hoses that are stored in the cupboard on the port side, connected those, and in a moment I was about to connect water with that.

Q. What occurred then? What did you do, where did you go? A. I took the hose down from the boat deck [998] and on to the weather deck, when I then came down in the front of the stow, at the front of the stow I could see this side of the stow and I could then see that it was burning, I think it was in the third bag from the top.

Q. Now on the top of the stow over that place where you saw the third bag from the top was burning, what was the condition of the top of the stow?

The Interpreter: May I please have that question read?

(Question read.)

(The witness speaks to interpreter.)

The Interpreter: The answer is "No," but I suppose it is difficult——

Q. Let me ask the question again.

You state that when you got down onto the weather deck you then had a view of the side of the stow, is that correct? A. Yes.

Q. Which side of the stow did you then see? A. The side abreast of No. 4 hatch.

Q. And with respect to that side what did you see? A. It was burning in the third bag from the top. There was no fire in the bags above but then up to the top of the stow.

[999] Q. Were you present when the starboard lifeboat was launched? A. Yes, sir.

Q. About how long would you say it was after you first heard of the fire that the starboard lifeboat was launched? A. Approximately half an hour.

Q. During the preceding half hour did you see the conditions on deck in the vicinity of the lifeboat? A. Yes, there were plenty of smoke and fog and I think that the port lifeboat came on fire about ten minutes after we had discovered the fire.

Q. What would you say as to the advisability or inadvisability or possibility of assembling the crew or passengers to launch the port lifeboat? A. I think it would have been bad seamanship to expose the passengers or crew to such conditions.

Q. Why would that be? A. The smoke was dense and there was plenty of fog coming down right in the place where the boats would have to be lowered.

Q. Coming back to the stowage, there were, were there not, some drums of chemicals stowed on the after deck? A. Yes.

Q. Where were they stowed? A. Stowed on the deck along the fore part of the masthouse, on the after deck and between the masthouse and the after part of the [1000] hatch coaming on No. 4 hatch.

Q. And between those drums and the hatch coaming was or was there not any space? A. There was a space about a foot.

Q. After the lifeboat was launched what was done, and where with respect to fighting the fire? A. We had four hoses playing, two on the boat deck and two down on the weather deck. I told the bosun to get hold of all the chemical fire extinguishers that he could lay his hands on and we used them but they were of no avail.

Q. How long approximately after you first heard of the fire was the fighting of the fire on the after weather deck continued? A. About an hour and a half.

Q. And from there what happened? A. We retreated to the boat deck.

Q. And what was done from there on? A. We continued playing water on the fire.

Q. How long did you continue fighting the fire from the boat deck or midships house? A. I think it was two and a half hours afterward we had to leave the midships house and go on to the fore deck.

Q. Are you talking about two and a half hours [1001] after the fire started? A. Yes.

Q. And from the boat deck or midships house how many hoses were used to fight the fire? A. We had three.

Q. From the midships house where did you and the rest of the crew go? A. We went down from the fore part of the bridge down onto hatch No. 3.

Q. Why did you do that? A. We could not stand it any longer in the midships house.

Q. Did you take any hose from the midship hose to the fore deck? A. I had one with me.

Q. Did you and the rest of the crew who were on board continue to fight the fire on the fore weather deck? A. Yes.

Q. How many did you have, one or more than one hose connected up on the fore weather deck? A. We had three connected up.

Q. Apart from those three which were connected up were there any other hoses available on the fore weather deck? A. There were two more.

Q. Of the three hoses which you had connected up did you use one or more than one? A. In the first place when we came down we tried to use the three of them, but we found out the pressure was so bad it was only enough [1002] for one.

Q. The engineers had left the engine room while you were still fighting the fire from the midship house; is that correct? A. Yes.

Q. Eventually you and all of the crew and master were forced to leave the ship? A. Yes.

Q. Where did you go then? A. We left the ship from the forecastle head, down into our lifeboat.

Q. The Black Gull's lifeboat? A. Yes.

Q. And where then did you go? A. We were then taken over to the Gripsholm. That is, the motor launch from the Gripsholm had arrived just when we were coming down from the forecastle head.

Q. Approximately what time was it, if you know, that you boarded the Gripsholm? A. It must have been around four o'clock.

Q. How long after you left the Black Gull was it approximately that you boarded the Gripsholm? A. I should think it took about half an hour from the time we came into the lifeboat until we came on board the Gripsholm.

Q. You have told us when you testified at the last session that you had made 30 or 32 trips from Europe to the United States on vessels which carried crude naphtha- [1003] lene. How did the manner or method of the stowage on those 30 or 32 trips compare with the Black Gull method of stowage? A. The stowage today is exactly the same as it was on the Black Gull.

Q. On the Black Gull on this voyage were the crew assigned to any lifeboat or lifeboats—that is, prior to the outbreak of the fire?

Mr. Abberley: Your Honor, I am going to object to this question as a leading question. If Mr. Pyne wants to lay a foundation for this, he is at liberty to do so, but I am going to object to that question.

The Court: Objection sustained.

Q. Do you know whether or not there were any notice or notices posted on the Black Gull on this voyage concerning lifeboats?

Mr. Abberley: I object to the question, your Honor, on the ground it is a leading question.

The Court: He would have to get some idea of what the subject-matter is. Objection overruled.

A. Apart from the sign in the passengers' cabins, there was one sign in the crew's messroom, one in the officers' messroom, and one in the alleyway outside the passengers' cabins.

[1004] Q. What was the content of those signs, in substance? A. They assigned each member of the crew to one particular boat, told them what their job would be in the boat, and it also gave instructions about fire drills.

Q. On the night of July 18, 1952, on the Black Gull, were you on the bridge, the navigation bridge, at the time of passing Nantucket Shoals Lightvessel? A. I came up as we were passing.

Q. What was the condition then with respect to sunset? A. The sun had set.

Q. Do you know approximately what time the sun had set that night? A. About 7 o'clock.

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Cross-examination by Mr. Longley:

Q. From the time you came on deck after learning of the fire until the ship was abandoned, are you satisfied that you and the other men on the vessel made every possible effort to extinguish this fire? [1005] A. Yes.

Q. When you first went on deck and discovered the fire you had four hoses playing on the area where the fire was burning, did you not? A. Yes.

Q. And you also used fire extinguishers? A. Yes.

Q. At the time the area of burning on the top of the stow was some three feet in diameter, was it not? A. On the top, yes.

Q. And in spite of all of the efforts which you and your men directed, the fire spread through the stow with great rapidity, did it not? A. Yes.

Q. Eventually the naphthalene melted and a molten river of fire flowed over the after deck, did it not? A. Yes.

Q. And later that was true also of the forward deck? A. The naphthalene had not started to melt when we left the ship—that means on the foredeck.

Q. And then some hour or so after you came on deck when the fire broke out, you found that the fire had been communicated to the cargo in the ship's compartments aft, isn't that so?

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[1006] A. Yes, it started to burn in the tarpaulin and hatch covers.

Q. No, I spoke of the cargo. It was about an hour later that the cargo in the compartments below deck started burning, isn't that so? A. I cannot tell because we had to withdraw to the boat deck, to the low bridge, about the time when the hatch covers on the No. 4 hatch had come afire.

Q. Had the speed with which this fire spread surprised you, Chief? A. Yes.

Q. You had received no warning, then, as to the great danger which the carriage of this cargo presented? A. No, I cannot say we considered it a great danger.

Q. And you had received no warning of danger from anyone from on shore? A. When I first started carrying this material back in 1949, I had a conversation with Captain Hollaar, but I cannot remember that it has been said that it was very dangerous.

Q. You have told us that you carried naphthalene [1007] on the deck of a number of different vessels on different voyages. A. Yes.

Q. And all of those voyages to which you refer were voyages of vessels in the service of the Black Diamond Line, were they not? A. Yes.

Q. And I gather from what you say that on these other voyages the naphthalene was stowed on deck without any covers? A. Yes.

Q. That isn't quite accurate, is it? Didn't you sometimes cover the naphthalene when it was stowed forward, that is, covered with tarpaulins?

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A. We had one instance—it was a small cargo of 40 tons stowed on both sides of the foredeck, and those parcels were covered.

Q. They were covered with tarpaulins which were lashed down over the stow? A. Yes.

Q. And that stow that you covered the tarpaulins [1008] with was on the forward deck at the bow, isn't that so? A. No, it was right in the—it was on each side of No. 3 hatch.

Q. On the forward deck? A. On the forward deck.

Q. You had no trouble in bringing that cargo forward to New York, did you? A. Yes.

Q. What was the trouble? A. We didn't manage to keep the tarpaulins over the stow.

Q. "We didn't"?

The Interpreter: "We didn't manage."

Q. On this voyage of the Black Gull you had the tarpaulins lashed over some drums of chemicals on the after deck, did you not? A. Yes.

Q. You told us on Friday that this stow of cargo on the after deck, that is, the stow of naphthalene during the course of the voyage settled down and became very compact. A. Yes.

Q. What possible ventilation was there of the bags of naphthalene after the bags settled down, as [1009] you have described, and made a block of compact stowage? A. Nothing except that the wind would ventilate the sides, the top and underneath through the openings.

Q. That would afford ventilation on the outside of the block of the stow only, wouldn't it? A. Yes.

Q. This was a passage across the Atlantic where there was one day after another of bright sunlight, isn't that true?

Mr. Stonebridge: I object to that question, your Honor. The log speaks for itself on the weather.

Mr. Longley: Do you want to examine the log, Chief?

Of course, the log doesn't speak for itself but it is a self-serving declaration. I have no objection to him looking at it if he wants to.

The Interpreter: Do you expect me to translate this?

Mr. Longley: Oh, no, you don't need to.

The Court: Can you tell what the weather was every day without looking at the log?

The Witness: I cannot say exactly without looking at it, but I know that we had fog and we had rain and we did not have sun, bright sun, every day.

[1010] Q. All right, you had bright sun most of the voyage, most of the journey, didn't you? A. No.

Q. Well, let us look at the log book then (handing to witness). You tell us the dates on which you had sun and the dates on which you had fog. A. (After examining) We left on the 10th.

On the 11th it was hazy and foggy.

On the 12th it was overcast.

On the 13th it was lightly cloudy, overcast in the evening.

On the 14th we had rain squalls, later overcast.

On the 15th we had rain squalls again, hazy, and it cleared up on the 8 to 12 p.m. watch.

On the 16th, fog. It was foggy the whole day.

On the 17th we had fog, clearing up in the afternoon.

On the 18th it was clear and hazy in the afternoon.

Q. It would appear from what you have just told us that you had very little sun, that it was most of the time foggy and hazy. Is that what you are trying to tell us? A. Yes, according to the log.

[1011] Q. You swore to the exact opposite in Oslo, did you not?

The Interpreter: I did not get it.

Q. You swore to the exact opposite in Oslo, did you not? A. That I cannot say; I have no recollection.

Q. I lay before you the transcript of your testimony given at Oslo before the official Norwegian Board of Investigation. This is in Norwegian. The 7th paragraph there (indicating).

The Interpreter: The witness says—I am now translating word by word, but they also had mostly good weather and much sun on the last day before the fire.

Mr. Longley: That is not the translation we have been agreeing upon.

Mr. Pyne: I would like to have the entire translation, including the preceding sentence.

Mr. Longley: The whole thing is here.

Mr. Pyne: I am going to offer the whole.

Mr. Longley: I object to it, then.

Mr. Pyne: The whole of the witness's statement there, not taking out one little piece.

Mr. Longley: I am asking if he did not swear [1012] to this when he was examined under oath in Oslo.

Mr. Pyne: I say it is not fair to take out one small piece instead of the whole of it.

The Court: You will have your opportunity on redirect.

Mr. Longley: "They had some sea on the way so that some water may have sprayed on the deck cargo, but they mostly had good weather with much sunshine, and this was also the case on the last day before the fire occurred."

Q. Didn't you give that testimony at Oslo? Isn't that what the translation is?

The Interpreter: It is not entirely accurate.

Mr. Longley: Where does this translation come from, Mr. Zisgen?

Mr. Zisgen: That translation came to us from Ole Torleif Roed. In Oslo, in the early stages of this case, and during the week before this trial started, Mr. Pyne's assistant, Mr. Ryan, called me up and then came over to the office and made suggestions as to corrections in the translation.

My understanding was that excepting as corrected in pencil, his office was satisfied this is an accurate translation.

[1013] Mr. Stonebridge: As a party very much interested in this litigation, I do not know that I have ever seen the original nor a translation of the document they are discussing, and I most definitely

am not going to bind my client to a translation which may or may not be accurate.

The Court: Of course, counsel's agreement cannot change it.

Mr. Pyne: We do not dispute the translation. I am informed by Mr. Rein, your Honor, the original of this translation was one jointly made by the Norwegian attorney for the cargo and the attorney for the owner.

The Court: None of that will bind me, Mr. Pyne. I am interested in what the man actually says.

Mr. Pyne: Yes, but we are not disputing the translation as far as we are concerned.

Mr. Longley: Put to him my question and ask him if he did not give that testimony in Oslo.

The Witness: Yes.

The Court: May I ask the Interpreter whether he translated Mr. Longley's words or merely pointed to the Norwegian transcript of the witness's testimony.

The Interpreter: What I did, I interpreted [1014] Mr. Longley's words and pointed at the same time.

The Court: That seems to me ambiguous, if as you say Mr. Longley's is an incorrect translation of the Norwegian. So you tell us whether he said what Mr. Longley said or whether he said what the Norwegian says.

The Interpreter: Yes.

Mr. Longley: "Yes" to what?

The Witness: This one—pointing to the Norwegian paper.

Mr. Longley: I have no doubt of that. Perhaps, Mr. Interpreter, to meet his Honor's views, you tell us what you say is there different from what I have said.

The Court: You translate the Norwegian paper.

Mr. Longley: "They had some sea" is where I started.

The Interpreter: "They had had some seas on the voyage"—or under way, really—"so it may have been spread on the deck cargo, but mostly they had good weather with much sun also on the last day before the fire."

Mr. Longley: Well, that is what I read.

The Court: I thought you read it quite differently, Mr. Longley.

[1015] Mr. Longley: I do not know just what the difference is.

The Court: We can either ask the stenographer to read what you read, or you read it again.

Mr. Longley: I read this exactly from the translation. The only difference is "much sunshine," there is a comma here, "much sunshine, in effect during the voyage, and that also was the situation on the last day." Isn't that the sense of it, Mr. Interpreter?

The Court: I think that is the meaning. I have what the interpreter said and I have what you said, so you do not have to ask him whether it is the same. I will have to pass on it.

Mr. Longley: I will ask the interpreter, is there a comma there after "much sunshine"?

The Interpreter: No.

Mr. Longley: Well, would it be fair to ask the interpreter this: Isn't the sense of that statement that they had mostly good weather with much sunshine during the voyage?

The Interpreter: No.

Mr. Longley: That is not the sense of it?

The Interpreter: No.

[1016] Mr. Longley: It appears, then, the translation we have agreed upon this interpreter tells us is incorrect.

The Court: That is right. We will take a short recess.

(Recess.)

Q. Chief, I will ask you if you did not give this testimony which I point out to you in this transcript (handing to witness).

(Witness examines.)

Mr. Longley: While he is reading that, I will read you the translation, if your Honor please, which Mr. Rein has agreed is a proper translation.

"When the accident occurred the witness came on deck as soon as the alarm signal had been given, and he then saw fire and smoke approximately in the middle of the surface on the stow of naphthalene which was placed against the bulwark and had a width of about 17 feet. From this point the fire spread quickly."

A. Yes.

Q. Nowhere in the testimony at Oslo did you say anything whatever about seeing flames on the third [1017] tier of bags down from the top next to the No. 4 hatch, did you? A. No.

Q. What you said, which you have just read there, is what the situation was on this ship, isn't that so? A. This is what I saw when I came on the deck.

Q. And what you saw was a flame burning approximately in the middle of the top of the stow and you saw that flame spread quickly from the point where you first saw it, and that is all you ever did see, isn't it?

The Interpreter: May I have the question again?
(Question read.)

A. No.

Q. Why did you give the testimony you did at Oslo, Chief? A. What is here referred to is what I said about what I saw when I first came onto the deck afterwards—I had the hoses connected and when I had come down on the hatch, I saw it burning on the side.

Q. But you never told the Norwegian investigating officer who was interrogating you anything about that, did you? [1018] A. As far as I remember, there was no question about it. I was asked what I saw at the moment when I came on deck.

Q. Then you and the master and the second officer prepared a report about the fire, didn't you? A. Yes.

Q. There is nothing in that statement prepared by the master, you and the second officer that gives any information whatever about what you now say you saw when you had the hose, is there? A. Yes, but this is not detailed testimony.

Q. What is that? A. This is not detailed testimony.

Q. This is the statement which you, the master and the second officer prepared, isn't it—a report, I should say? A. Yes.

Q. And you were required by Norwegian law to prepare that report and give to the investigating officer, were you not? A. No, the captain has to make a report and I have to countersign it.

Q. You have to what?

(Answer read.)

[1019] Q. Well, this is the report which you did countersign isn't it? A. Yes.

Q. And this report says, in effect, that the fire started on the top of the stow on the port side, about halfway be-

tween the hatch coaming and the ship's bulwark and then spread?

Mr. Pyne: I object to that, your Honor. I don't think the report says that.

Mr. Longley: Well, that is my language. I am trying to give the sense of it.

Mr. Pyne: Why not offer the whole report? The report speaks for itself.

Mr. Longley: All right.

Mr. Pyne: If you don't, I will.

Mr. Longley: Is this the agreed translation now, or do you want this gone over?

Mr. Stonebridge: I would like an opportunity to have the translation checked.

Mr. Longley: That is all right.

Mr. Longley: And our attorney in Oslo went over it and agreed upon this, and I assumed that was that, but apparently there is some difficulty over it.

You weren't there at that time?

[1020] Mr. Stonebridge: I was not.

Mr. Longley: Certainly my brother has a right to examine it. But you have a copy of it now, do you not?

Mr. Stonebridge: I don't believe I have a copy of it. I have read a copy of it, but I don't have a copy of it.

Mr. Longley: Well, I will let that matter go for the moment, if I may.

Q. Chief, you commented that the bags of naphthalene stowed on the Black Gull were secondhand bags and showed stains on the exterior. A. Yes.

Q. The stains were oil stains, were they not? A. They were tarlike stains from the naphthalene.

Q. Let me see. Raw naphthalene—I guess the term is "crude"—crude naphthalene has a lot of creosote in it,

isn't that so, or don't you know? A. I dare not have any opinion on that.

Q. In any event, the stains you saw on the bags you knew came from the naphthalene? A. Yes, it has been like that on all cargoes we have had.

Q. And you put your hands on the stains and found them sticky, is that what you mean when you say [1021] it was a tarry substance? A. No, I smelt it.

Q. Smelled the stains, you mean? A. Yes.

Q. And those bags with the tarry stains on the exterior were that way when the bags were stowed at Antwerp and Rotterdam, isn't that so?

The Interpreter: May I have the question, please?
(Question read)

A. Not all of them.

Q. How many? How big a percentage? A. I cannot tell.

Q. Well, I won't try to stick you down to the percentage, but did most of them have the stains? A. Yes, of the ones I saw on the top of the stow, I should say that about 50 per cent had such stains.

Q. That did not come as a surprise to you because most of the naphthalene you had carried on prior voyages had similar stains, is that what you mean to tell us? A. Yes.

Q. You had met Captain Hollaar, did you not? A. On this voyage?

[1022] Q. Yes, on this voyage. A. Yes.

Q. He was on board at the time the stowage was going forward, both at Antwerp and at Rotterdam, isn't that true? A. Yes.

Q. And you and the captain went over the layout of stowage with Captain Hollaar, did you not? A. Yes.

Q. And Captain Hollaar was on board after the cargo of naphthalene had been stowed and made fast with the rope slings, isn't that true? A. Yes.

Harvey Lyngaas—For Petitioner—Cross

Q. This naphthalene gave off a strong odor, did it not, as the vessel lay both at Rotterdam and at Antwerp? A. Yes.

Q. And that odor continued, of course, throughout the voyage, did it not? A. Yes.

Mr. Longley: That is all, if your Honor please.

The Court: Mr. Lyngaas, you spoke of ventilation striking the outside of the stow?

The Witness: Yes.

The Court: Was there no ventilation through the spaces in the bottom tier which we are told existed [1023] after every third bag?

The Witness: Yes, I think I mentioned that.

Mr. Abberley: Your Honor, the witness testified to the effect that there was a "No Smoking" sign on the bulwark of the port boat deck.

I have spoken to Mr. Pyne about this and he has agreed with me that the record should show that such sign was not on the inboard side of the bulwark of the port boat deck but on the after or outboard side of the bulwark of the port boat deck.

Mr. Pyne: Yes, your Honor, we so agreed—that is what the witness stated, or at least intended to state.

The Interpreter: Shall I translate that for the witness?

The Court: No.

Mr. Abberley: It doesn't affect the witness, excuse me.

Cross-examination by Mr. Abberley:

Q. Mr. Lyngaas, you have testified that you left the Black Gull sometime after 4 o'clock in the morning of July 19th, is that correct? A. Between half-past three and four.

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[1024] Q. You have testified, have you not, that you often made inspections of the cargo? [1025] A. The deck cargo.

Q. The statement in the lower part of that paragraph reading:

> "During the voyage the witness had not inspected the cargo except that one day, probably a few days before the fire occurred, he took up one of the wooden hatches in hatchway No. 4 on the middle deck and looked into the lower hold where everything was then apparently in order."

A. Yes.

Q. Is that an accurate translation to the effect that you had not inspected the cargo except that one day, probably a few days before the fire occurred? A. By this is meant the cargo in the holds, not the cargo on the decks.

Q. Mr. Lyngaas, when you first heard the alarm and you ran out on deck, which deck did you first run to? A. I came out onto the boat deck on the port side.

Q. And how long did you remain on the port boat deck? A. I ran across the boat deck and down onto the weather deck.

Mr. Abberley: Will you ask the witness to answer my question—how long did he remain?

[1026] A. I ran across and it may have taken up to, say, half a minute to do it.

Q. Then did you run down the ladder and out onto the weather deck? A. Yes.

Q. And how long did you remain on the weather deck? A. Twenty, thirty seconds, perhaps, before I went back again.

Q. And where did you go back to after you left the weather deck? A. Up onto the boat deck again.

Q. Which side of the boat deck? A. The port side.

Q. And how long did you remain on the port side of the boat deck on this occasion which you are describing? A. I cannot possibly say how long it took. What I did was to take the hoses out of the cupboard, to connect them and to bring the hoses down onto the weather deck.

Q. Can you estimate the time? A. I cannot.

Q. At that point, that is, when you were preparing the hoses, how far away was the fire from the after end of the port lifeboat? A. I would say about 15 feet.

[1026a] Q. And which way was the smoke—in which direction relative to the ship was the smoke leaving the ship? A. The smoke was coming off the port side, with a small share forward.

Q. Had the wind been brought around to the starboard side of the ship at that time which you are now describing, that is, when you were connecting the hoses? A. The wind was on the starboard side, yes.

[1027] Q. So I understand your testimony at this point to be that in something over a minute and a half to an unknown period of time which you don't care to estimate, the wind was brought from the port bow around to the starboard beam; is that correct? A. Yes.

Q. After you connected these hoses, what did you then do? A. I carried them down to the weather deck and played water on the naphthalene from there.

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Q. As you were playing the hoses were you standing inboard and forward of the fire? A. Yes.

Q. Did you see the fire from that position spreading towards the port lifeboat? A. No.

Q. How far were you from the fire as you were playing the hoses? A. Approximately five or six feet.

Q. When did the fire start to spread towards the port lifeboat? A. About ten minutes afterwards, I was told by the second officer who was on the boat deck.

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[1028] Mr. Abberley: No, strike that. (To interpreter:) Will you please ask my question and ask the witness to answer my question directly.

The Interpreter: May I have the question. (Question read as follows):

Q. When did the fire start to spread towards the port lifeboat? A. Approximately ten minutes after the fire had been discovered.

Q. And you say that you were standing there five or six feet from the fire, fighting the fire, and you did not see the fire spreading toward the port lifeboat, even though by that time you had been on the deck say from three to four minutes? A. From the position where I was standing on the deck I could not see the fire spreading to the lifeboat.

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Mr. Longley: I will merely offer, if I may, in Norwegian, the declaration signed by the master, first and second mates, and I assume thereafter we can agree upon a translation.

Mr. Pyne: Yes.

Mr. Longley: Perhaps the original better be marked, in Norwegian. This statement to which I refer is marked "Dok, 4," which as I understand means document [1029] 4, appearing on pages 7 to the top of page 9 on this document in Norwegian marked at the top "Oslo Byrept." What does that mean?

The Interpreter: Oslo Crown Court.

Mr. Pyne: It is part of the maritime declaration. No objection.

(Marked Libelants' Exhibit 46.)

Harvey Lyngaas—For Petitioner—Cross

Cross-examination by Mr. Stonebridge:

Q. Chief, we have had a lot of talk about this maritime declaration and the official board of inquiry in Oslo. Does that document which has just been marked contain your exact words or what is it? A. I gave my testimony in full to the judge, and he writes it down afterwards.

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[1030] Q. Then in essence what is purported to be your statement is in fact a summary of your oral testimony; is that correct? A. Yes.

Q. Referring specifically to the disputed passage concerning the weather, do you now have a recollection of the type of weather you encountered on the Black Gull voyage of July 10th to 18th, 1952? A. I could not remember every day until I had refreshed my memory from the log.

Q. To the best of your recollection does the log or the disputed translation in the maritime declaration more accurately define or describe the weather you encountered?

The Court: Just a minute. Have we any idea that he knows what the Norwegian is, is a disputed translation?

Mr. Stonebridge: I believe it was brought before him, your Honor, when it was discussed before. (To interpreter:) Will you find that statement or paragraph.

[1031] The Court: What you are showing him now is the Norwegian?

Mr. Stonebridge: That is right, your Honor.

The Court: What I am interested in is whether he knows the difference between the Norwegian and the disputed translation. You asked him about the disputed translation.

Mr. Stonebridge: (To interpreter) Will you put that question.

(Interpreted by the interpreter.)

Harvey Lyngaas—For Petitioner—Cross

The Witness: As far as I understand the English translation I am supposed to have said that we had sun every day, while in this Norwegian text I have said that we had sun on the last day.

Mr. Stonebridge: There is a question.

The Court: Yes, now read the question.

(Question referred to read by reporter as follows):

Q. To the best of your recollection does the log or the disputed translation in the maritime declaration more accurately define or describe the weather you encountered? A. Of course the logbooks give a reliable picture.

Q. Thank you. Chief, you have had questions asked in your cross examination by Mr. Longley concern- [1032] ing the one incident where you carried a shipment on deck, a shipment of naphthalene on deck, covered with a tarp. Now I ask you whether you had any trouble on any other voyage than the Black Gull, on shipments of crude naphthalene stowed on deck uncovered? A. No.

Q. Did you have aboard the Black Gull a file of operating orders and letters of instructions from Black Diamond Steamship Corp.? A. Yes.

Q. Chief, is it not normal procedure while at sea for the cargo officer of the vessel to periodically check the lashing of deck cargo? A. Yes.

• • •

Mr. Pyne: Your Honor, with the permission of all counsel may I state that last week at my suggestion a cablegram was dispatched from Black Diamond New York to their Rotterdam agent, asking whether they had any record of the cabins by number occupied by the particular passengers, and a cable was received in reply.

• • •

Harvey Lyngaas—For Petitioner—Cross

• • • With the permission of counsel I will [1033] read the reply:

"Passengers occupied following cabins:

1. Spanderman-De Nobel.
2. Furger and Muller.
3. Driesprong couple.
4. Miss Driesprong.
5. Leeson couple."

Now in petitioner's case, your Honor, we have called every officer or member of the crew of the Black Gull at the time of the fire who is now or during the currency of this trial has been in the employ of either Skibs Jolund, the vessel owner, or their managers, Sigurd Herlofsen & Co., with the exception of one man, a sailor, and he is and has been throughout the trial at sea, and further, that man was not on watch or on deck when the fire started.

May I also for the record state—and I assume their can be no question about it—that the maritime declaration shows the cargo attorneys—I think perhaps it is already in the record—had present at the declaration an attorney representing them. Mr. Rein informs me and will so state or testify, if need be, that following the usual procedure in the declarations, these attorneys are permitted, and the cargo attorney did in fact question [1034] the various witnesses.

Now there are three witnesses in the Maritime declaration who are not in our employ, of our clients or managers, and have not been for a long period of time. Their testimony is in the maritime declaration. I am ready to offer it. I do not think it is going to add anything to the record, but I make that offer and make those statements, because if we are at any time to be confronted with any suggestion or criti-

cism, that we have failed to produce anybody, I would like to hear it now.

We have produced everybody we could, and unless I hear some comment on that score, I then, your Honor, will rest the case for the petitioner. Except, of course, too, I have still some Dutch translations to produce that I mentioned during the course of the examination, and they are not yet completed, your Honor, and I will produce them later.

• • •

[1353] JOSEPH MAZZOTTA, called as a witness by the libelants in rebuttal:

• • •

Direct examination by Mr. Zisgen:

Q. What is your occupation, Commander Mazzotta? A. Commander of the United States Coast Guard.

Q. How long have you been in the Coast Guard? A. Thirty years in August—in October, this next October.

Q. Twenty-nine years and something, is that right? A. That is right, 29 years and 4 months.

Q. In July 1952 where were you stationed? A. I was commanding officer of Port Security Unit, Pier 9.

Q. That is Pier 9—— A. East River, New York.

Q. New York City? A. That is right.

Q. At that time how long had you held that position? A. Since November 20, 1950.

Q. Now, what did your duties include in that position at that time, speaking very generally? A. My duties generally were to see that the [1354] captain of the port duties —the policies were carried out—the Port Security laws, dangerous cargoes and explosives law were carried out with the forces available.

Q. When you say "dangerous cargoes," what do you refer to? A. I refer to the gray book, what is known as the gray book, CCG-187. It is 46 U. S. Code.

• • •

[1362] *Cross examination by Mr. Pyne:*

Q. Commander, I am going to show you a copy of this gray book that you referred to (handing to witness). A. Yes.

Q. I think you called it CG-187. A. Yes.

Q. That is the book that I am now showing you. A. Yes.

Q. There has been testimony here that that book covers a number of commodities. A. Practically every commodity that is shipped.

Q. Do you know exactly how many commodities? A. No, I do not.

Q. Well, I will refer you, if you will, to pages N-34 to N-49. A. (Examining).

Q. Those pages, in more or less fine print, alphabetically list the commodities referred to in that book, do they not? A. That is correct, sir.

Q. Now, I have taken those pages, Commander, and counted 22 in all, and I have just taken at random [1363] one page and counted 49 items on that one page and I have come to a total of 1,078 articles.

Would you say that that would probably be a fair approximation, without counting up each page and each article? A. If you are a statistician, I would say yes.

If you are not, I would have to take your word for it.

Q. Now, among those articles in turn, Captain—and if you will turn to the page beginning N-98—they are in a portion referred to in different classifications and tables. A. (After examining) Yes, sir.

Q. Now, Table A is Class A, dangerous explosives, is it not? A. That is correct.

Q. And then Table B, beginning on page N-107—that is Class B, "Less Dangerous Explosives," is it not? A. That is correct, sir.

Q. And Table C, or Class C, "Relatively Safe Explosives"? A. That is correct.

Q. And the next table, D, is "Inflammable Liquids" on page N-125. A. That is correct.

Q. And following that is Table E with "Inflammable [1364] Solids and Oxidizing Material"—page N-177, starting there. A. That is right.

Q. Table F, starting at page N-220, is "Corrosive Liquids." A. That is right.

Q. Table G, "Compressed Gases," page N-245, starting there. A. That is right.

Q. And Table H, Class A, "Extremely Dangerous Poisons," starting at page N-258. A. That is right.

Q. And Table H, Class B, "Less Dangerous Poisons"—starting at page N-264. A. That is correct.

Q. Table H, Class C, "Tear Gas or Irritating substances"—starting at page N-296. A. I have here on page 296 Table H, Class B, "Less Dangerous Continued."

Q. Does it say "Tear Gas"?

There is Table H, Class B, "Less Dangerous Poisons." A. Oh, yes.

Q. And then following that Table H, Class C, [1365] page N-296. A. Yes.

Q. And that table is "Tear Gas or Irritating Substances." A. That is correct.

Q. And then the next one is Table J, "Combustible Liquids" starting at page N-301. A. That is correct.

Q. Now, following that, Commander, comes Table K entitled "Hazardous Articles"—isn't that true? A. Yes.

Q. And then in that Table K, naphthalene is included, is it not? A. That is correct.

Q. Now, isn't it a fact that of all those cargoes mentioned throughout the entire book, the least dangerous are

those that are taken as a class in Table K under "Hazardous Articles"? A. That is correct.

Q. And isn't it also true, Captain, that the definition for "on deck protected"—and I call your attention now to page N-18 for that definition. A. (After examining) That is correct.

Q. You can correct me if you need to, Captain, [1366] but that definition will refer to the term "on deck protected" wherever in any and all of those tables we have mentioned the words "on deck protected" are mentioned, isn't that true? A. Yes.

Q. And it is mentioned in "Inflammable Liquids"? A. Yes.

Q. It is also mentioned in "Inflammable Solids and Oxidizing"? A. Yes.

Q. And it is also mentioned in Table E, "Corrosive Liquids"? A. That is correct.

Q. And also in Table F, "Compressed Gases"? A. That is right.

Q. And in Table G, for "Extremely Dangerous Poisons." A. That is right.

Q. And in Table H, Class A, for "Less Dangerous Poisons"? A. That is right.

Q. And of course it is mentioned, naphthalene and other articles, in—— A. K.

Q. ——Table K? A. Yes.

• • •

Petitioner-Appellee's Exhibit C

BLACK DIAMOND LINES
39 Broadway, New York 6, N. Y.
Telephone: DIgby 4-7040

TERMS OF CONTRACT WITH PASSENGER

IT IS MUTUALLY AGREED between Black Diamond Steamship Corp. (hereinafter referred to as the Line) and the passenger named herein (hereinafter referred to as the passenger) that in consideration of the payment to the Line by the passenger of the passage money indicated below, the Line will provide the passenger with passage as stated herein, unless prevented by some unforeseen circumstance, on the terms stated herein, both numbered and unnumbered, which form the contract, and shall govern the relations between the Line and the passenger in every possible contingency wheresoever occurring and even in the event of deviation or unseaworthiness of the vessel at the inception of the voyage or subsequently and whether or not this ticket has been signed by or on behalf of the passenger.

• • •

1. The word "Line" when used in this contract ticket, shall be deemed to include the shipowner, charterer, the vessel, the Master, agents and operators, and all or any of them.

• • •

17. All limitations, exceptions and conditions herein contained as to the liability of the Line shall apply also to the agents, employees and other representatives of the Line.

18. It is intended that all the terms of this contract shall be valid, enforceable and available to the Line so far as and

wherever the law will permit even where there has been negligence for which the Line is chargeable, and that in all instances where it may be possible to contract against the consequences of negligence, the Line, although negligent, shall not be under any liability whatsoever.

19. The Line shall not be liable for any claim whatsoever, whensoever and howsoever occurring, arising from any cause of whatsoever kind unless caused by the Line's negligence. The burden of proving negligence shall be on the party asserting it.

20. The steamship is not specially fitted or equipped for the carriage of passengers and the Line does not hold the vessel out as a passenger steamer or as being engaged in the transportation of passengers and the passenger is received for transportation at his or her own special request with knowledge of the foregoing circumstances. The Line, in respect of the passengers, does not undertake and shall not be held to, the obligations of a passenger carrier, and shall not be bound to afford any accommodations, facilities, victualing, etc., other than those which are usually available on this steamer. No Doctor or Nurses are provided.

• • •

Petitioner-Appellee's Exhibit D-2

Abstract of the log book for BLACK GULL for the time 3-18th July 1952

Date 1952	Place	Temperature in degrees Celsius 0-0400	0400-0800	0800-1200	1200-1600	1600-2000	2000-2400	Weather Wind	Force	Description
July 3	Antwerp			19				NW	2	overcast
" 4	"			20				NW	4	cloudy with rain squalls
" 5	"			28				NW	3	cloudy
" 6	"			30				SE	3	lightly cloudy
" 7	"			27			18	S-W	1-2	lightly cloudy
" 8	on voyage to Rotterdam	18	19	31				NW	3	clear—cloudy
" 9	Rotterdam			27				SW	3	lightly cloudy
" 10	"			26			14	SW-W	3	cloudy—lightly cloudy
" 11	on voyage to New York	17	16	18	17	17	16	SSW-SW	4-6	hazy with fog banks—later cloudy
" 12	"	16	17	17	18	18	17	WNW-NW	5-6	lightly cloudy—cloudy—overcast
" 13	"	18	21	22	20	19	17	W-WNW	6-5	clear—cloudy
" 14	"	17	16	22	21	19	18	WNW-S	4-0-4	cloudy—overcast rain squalls
" 15	"	19	20	22	23	20	19	SE-ESE	3-4	overcast—rain—hazy
" 16	"	20	19	18	19	17	17	E-W	3	hazy—fog banks
" 17	"	17	16	23	22	21	22	SW-WNW	3-6	fogbanks—clearing
" 18	"	19	20	25	23	22		WNW-W	5-3	clear—lightly cloudy—hazy

A 414

19	20	25	23	22	WNW-W	3-5	clear—lightly cloudy—hazy

Petitioner-Appellee's Exhibit G

SIGURD HERLOFSON & CO. A/s
OSLO

REPORT ON LOADING AND DISCHARGING

M/S ..... loaded / discharged in .....

a cargo of .....under charter party dated.....

on a voyage from .....to .....

Charterers .....Local agents .....

	Date	Time	
The vessel arrived			Local ordinary working hours:
The vessel docked			Quantity of cargo:
Notice handed in			
Time to co .t from ...			
Loading / Discharging commenced ..			Laydays:
Loading / Discharging completed ...			Demurrage: / Despatch:

Date	Day	Time worked from	Time worked to	Overtime hours	Overtime minutes	Number hatches	Number gangs	Quantity loaded	Quantity discharged	Remarks

Worked altogether.....hours. Discharged altogether.....tons.
Loaded altogether.....tons.

.....the.....19....

....
1st officer. Master.

(Any additional information should be given on the next page.)

Petitioner-Appellee's Exhibit H

SIGURD HERLOFSON & CO. A/S
OSLO

VOYAGE–REPORT

Report No. .....19...

M/S..... Gr. reg. tons.....Dw. tons.....

Voyage from..... to.....loaded/in ballast

Departed from quay, the.....at.....hrs. assisted by.....tugs.

Passed the pilot station outward bound.....the.....at....hrs.

Arrived the pilot station inward bound.....the.....at....hrs.

Distance between pilot stations.....nautical miles. Time used from the Pilot Station.....

Distance between pilot stations observed.....nautical miles to pilot station.....days.....hours.

Distance between pilot stations logged.....nautical miles. Stops at sea.....days.....hours.

Logged average speed....knots. Usual speed of the vessel, loaded/in ballast.....knots.

Greatest distance noon to noon.....nautical miles length of day .....Speed per hour.....

Smallest distance noon to noon.....nautical miles length of day .....Speed per hour.....

Draft: Departure Form.....Aft.....Mean.....Arrival Form..... Aft.....Mean.....

Bunkered, (date).....tons. Bunkers on board on departure .....metric tons.

Daily bunker consumption.....tons. Bunker consumption during the voyage.....metric tons.

Bunkers on board on arrival.....metric tons.

INFORMATION (other than stated above),

....
Chief officer. Master.

Petitioner-Appellee's Exhibit I

A/S "Black Gull."

Passengers Account voyage no. 20.

Eastb.	3 adults	9⅔ day á $ 6.00 per day	= $	174.00
Westb.	2 "	9⅓ " " " " " " "	= "	112.00
		Total $		286.00

New York April 14th 1952.

S. SÖRENSEN.

S. Sörensen
Master.

cc. Black Diamond Steamship Corp. 3
Sigurd Herlofson & Co A/S 1

Petitioner-Appellee's Exhibit J

To be produced when signing on or discharging crew.

Translation.

SPECIFICATION OF CREW
for
M/S "BLACK GULL" Home port Oslo
Code Letters L N F M

Gross tons	*Material*	*H. P.*	*Consumption of coal[1] tons pr. 24 hours*	*Number of furnaces*	*Number of main engines*	*Electric plant in kw.*	*Electric steering engine and winches*
4929	steel	8000	—	—	1	600	yes

According to the Manning Regulations for Norwegian ships the manning of the above named cargo ship in foreign trade shall besides the master, consist of at least:

mates 3 boatswain 1 carpenter — able seamen 4 ordinary seamen 3 boys 1 novices 2 wireless operators 1[4] engineers 3 (in tropical waters 3) assistant engineers 1 donkeyman — fireman and coal trimmers — coal trimmers — (in tropical waters —) motormen 5[5] oilers 3[5] engine room boys 2 electrician 1 pumpman — steward 1[2] cooks 1[2] galley boys 1[2] mess boys 2[2] cabin boy—maid —[3]

---

[1] According to specification from the ship. — Calculated, in the absence of specification from the ship.

[2] This galley and messroom personnel is required in respect of the crew of the ship and is computed on the basis of the remaining crew prescribed in this specification. If the crew on board is more numerous, care shall be taken that the composition and number of the galley and messroom personnel comply with the Manning Regulations, § 8, section 1.

[3] In cargo ships which have on board at least 6 passengers, there shall in addition be at least one cabin boy or cabin maid.

[4] May be combined with some other position on board.

[5] May be combined with position as repairer or refrigeratorman.

Petitioner-Appellee's Exhibit J

If special circumstances should necessitate a more numerous manning than prescribed by the Manning Regulations, the master is responsible for signing on a sufficient crew. (Cfr. the Maritime Law, § 26).

Division of Navigation, Oslo, March 17th. 1951.

(signed) E. GETZ.

Petitioner Appellee's Exhibit L

DET NORSKE VERITAS
ADMINISTRASJONEN

Telegramadresse: Veritas
Telefon 42 18 66 (Sentralbord)

Codes:
Boe Code
The New Boe Code
A. B. C. Fifth Edition
Scott's—Sixth Edition 1885
Watkins' and Appendix
Bentley' Code

Checks Utstedes Til "Det Norske Veritas"

JH/AB.

OSLO, Den 11. juli 1955.
Postboks 82

Skips—A/S Jölund,
Sigurd Herlofson & Co. A/S,
Oslo.

M/S "BLACK GULL"

Vi henviser til telefonsamtale den 9.ds. og meddeler at vi for skipet har följende rapporter i vårt arkiv:

Bygningsbeskrivelse for skroget, datert Landskrona 12/5-1948
Bygningsbeskrivelse hovedmotorer, datert Landskrona 12/5-1948
Bygningsbeskrivelse hjelpemotorer, datert Landskrona 12/5-1948
Survey and Description of vertical boiler, datert Annan, Scotland 23/6-47
Beskrivelseog rapport for elektrisk anlegg, datert Landskrona 12/5-1948.
Utrustningsliste, datert Landskrona 24/4-1948
Liste over reservegods for havneaggregat, datert Landskrona 7/4-1948.

Petitioner Appellee's Exhibit L

Besiktelsesrapport, datert Göteborg 1/12-1947
" datert Landskrona 27/4-1948
" " " 12/5-1948
(3 stk.)
Seaworthiness Certificate, datert Karachi, 29/7-1948
Survey Report, datert Karachi 30/7-1948
Bunnbesiktelsesrapport, datert Antwerpen 25/9-1948
Survey Report, datert Glasgow 23/8-1948
" " , datert Karachi 6/5-1949
Rapport datert Karachi 5/5-1949
Bunnbesiktelsesrapport, datert Landskrona, 24/8-1949
Besiktelsesrapport, datert Landskrona 23/8-1949
" " " 24/8-1949
(2 stk.)
Rapport for periodisk besiktelse, datert Landskrona 24/8-1949
Besiktelsesrapport, datert Landskrona 24/8-1949
" , " Rotterdam 27/8-1949
(2 stk.)
Besiktelsesrapport, (havari), datert Landskrona 24/8-1949
Survey Report, datert New York, 13/9-1949
" " , " 2/11-1949, New York
" " , " New York 20/12-1949
" " , " " " 1/2-1950
Bunnbesiktelsesrapport, datert Antwerpen 18/2-1950
Besiktelsesrapport, datert 20/2-1950 (2 stk.)
Survey Report, datert New York 15/3-1950
" " , " " " 26/4-1950
" " , " " " 7/6-1950 (2 stk.)
" " , " Baltimore Md. 2/6-1950
(2 stk.)
Seaworthiness Certificate, datert Norfolk 28/5-1950
Survey Report, datert 22/7-1950
Sjödyktighetsattest, datert 5/8-1950
Bunnbesiktelsesrapport, datert Rotterdam 15/8-1950
Propeller-Besiktelse, datert Landskrona 9/2-1948

Petitioner Appellee's Exhibit L

Besiktelsesrapport, datert Rotterdam 15/8-1950
Survey Report, datert New York 10/9-1950
Donkey Boiler Survey, datert Baltimore 8/9-1950 (Exhaust fired)
Survey Report, datert New York 4/11-1950
" " , " " " 3/11-1950
" " , " " " 24/10-1950
Propeller-Survey, datert Yoker, Glasgow 29/11-1950
Survey Report, datert New York 27/12-1950
" " , " Philadelphia 20/12-1950
Bottom Survey, datert Hamburg 19/1-1951
Donkey Boiler Survey (oilfired), datert Hamburg 19/1-1951
Survey Report, datert Hamburg 19/1-1951
" " , " Philadelphia 22/2-1951
" " , " New York 1/3-1951
" " , " Philadelphia 22/2-1951
" " , " New York 12/4-1951
Loading Certificate for insulated chambers and refrigerating Machinery, datert New York, 4/6-1951.
Survey Report, datert Baltimore, Md. and New York, N. Y. 31/5 & 4/6-1951
Survey Report, datert New York 4/6-1951
" " , " Bremen 13/8-1951
Seaworthiness Certificate, datert Boston, Mass. 18/7-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 25/7-1951
Seaworthiness Certificate, datert New York 7/9-1951
Survey Report, datert New York 10/9-1951
Bottom Survey, datert 14/9-1951, Baltimore
Survey Report, " New York 22/9-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 20/9-1951
Besiktelsesrapport, datert Antwerpen 11/10-1951
" , " Rotterdam 16/10-1951
(2 stk.)

Petitioner Appellee's Exhibit L

Loading Certificate for insulated chambers and refrigerating machinery, datert New York 17/11-1951
Bottom Survey, datert Baltimore 13/11-1951
Survey Report, datert Baltimore 7/11-1951
" " , " " 8/11-1951
Donkey Boiler Survey (exhaustfired), datert Baltimore 13/11-1951
Besiktelsesrapport, datert Antwerpen 18/12-1951
Survey Report, datert Hamburg 8/12-1951
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 16/1-1952
Survey Report, datert 17/1-1952, New York
Loading Certificate for insulated chambers and refrigerating machinery, datert 13/2-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 6/3-1952
Survey Report, datert New York 6/3-1952
Besiktelsesrapport, datert Antwerpen 31/3-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Rotterdam 2/4-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 25/4-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Bremen 15/5-1952
Besiktelsesrapport, datert Antwerpen 19/5-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert Hamburg 27/6-1952
Loading Certificate for insulated chambers and refrigerating machinery, datert New York 12/6-1952
Survey Report, datert New York 14/6-1952
" " , " Philadelphia 9/6-1952
Besiktelsesrapport, datert Antwerpen 3/7-1952.

Ærbödigst
DET NORSKE VERITAS

STEDF. ADM. DIREKTØR

Petitioner-Appellee's Exhibit M

TRANSLATION
from: FRENCH WB:mf

MARITIME COMMISSION OF THE COURT OF COMMERCE OF ANTWERP

On July 9, 1952, we the undersigned L. Castelain and F. Verworst, retired masters for high sea voyages, domiciled at Antwerp, maritime surveyors attached to the Court of Commerce of such city, having been requested on June 28, 1952 by the Black Diamond Lines, ship brokers and agents of the Norwegian vessel "BLACK GULL" and insofar as necessary by the master of this vessel to examine the stowing of the merchandise to be loaded by this vessel destined for New York and out-ports,

Herewith declare that we betook ourselves on board the said vessel where we examined the steamer and noted that the various compartments were in proper condition to receive the cargo.

Repeating our inspections on board during the loading of the merchandise, as frequently as necessary to check the stowing of the cargo, we found that all the merchandise was stowed in the various compartments with the necessary dunnage and was handled with the care necessary for their ocean transportation.

When the entire cargo had been loaded, we assured ourselves that all steps were taken for the preservation of the cargo during the voyage from any and all damage by the sea.

In witness whereof we have drawn up and signed the present report which we have issued to the petitioners for all lawful purposes.

Antwerp dated as above.

L. CASTELAIN
F. VERWORST

Petitioner-Appellee's Exhibit U

Notice to Shipping

No. 5/1952 dated 19th November 1952

Netherlands Staatscourant 1953, No. 11.

(Danger labels)

Having regard to the provisions of section 99, sub-section 13 of the "Schepenbesluit, 1952" (Shipping Decree, 1952) respecting the marking of packages of dangerous substances by means of a distinguishing label or plate, and the provisions of sub-section 12(a) of the said section,

notice is hereby given by the Inspector General of Shipping: that dangerous substances which are loaded in a Netherlands port or in a port of the Netherlands Antilles must bear a special symbol;

that pending the adoption of similar symbols for world goods traffic and in order to avoid confusion with existing danger labels, packages of dangerous substances shall be marked with the symbols specified in Annex III to Schedule I of the International Convention on the carriage of goods by railway (C.I.M., 1953 edition).

• • •

Petitioner-Appellee's Exhibit V

INSPECTOR GENERAL
OF SHIPPING

The Hague,
129 Bankastraat,
Telephone 51.43.91.

Maître W. M. E. van Rossem,
132 Meent,

ROTTERDAM

No. II 33 - 4687 Date: 20th August 1955.

Subject: carriage of naphthalene.

With reference to your question as to the origin of the text respecting the regulations in force in July 1952 with regard to the carriage of naphthalene as stated in our letter of 30th July 1954, No. II 33-3681, a copy of which letter you showed me, I beg to inform you:

(a) that the text is indeed identical with that in our copy of the above-mentioned letter;

(b) I cannot produce forthwith the original text of the regulations;

(c) the text has never been published, nor has any other text to date;

(d) the only regulation which I have been able to trace immediately, the date of compilation of which I cannot find out forthwith and which relates to the period before the Shipping Decree 1952 took effect, states that naphthalene has to be stowed under the following conditions: "on deck and/or *below deck, cool, well-ventilated,* away from foods and other articles for human consumption, and from living quarters, *not together with materials coming under sub-sections 1, 5, 6, 7 of section 94.*"

For and on behalf of the Inspector General of Shipping

(signed): J. METZ
Inspector of Shipping.

• • •

Petitioner-Appellee's Exhibit X

(COAT OF ARMS)
HAVENPOLITIE

ROTTERDAM, 6 November 1953.
Tel. 51314 (5 lijnen).

To whom it may concern:

In my capacity as Harbourmaster of Rotterdam, I, Captain Johannes van Leeuwen-Royal Netherlands Navy (ret), have the authority and duty of supervision and investigation under the "Havenverordening Rotterdam" (by-laws of the Rotterdam Harbour).

It is, amongst other things, my duty to ascertain that any restrictive rules or regulations concerning the handling of dangerous goods in the port of Rotterdam are being observed.

With regard to shipments of naphthalene in bags I hereby declare that no rules or regulations are in force here concerning this commodity and, accordingly, this office does not interfere with the handling of it.

The Harbourmaster of Rotterdam,

J. VAN LEEUWEN.

J. van Leeuwen.

• • •

Petitioner-Appellee's Exhibit Y and AA and AB

(Exhibit Y is a book in Norwegian. Exhibit AA and AB printed below are English translation of sections of Exhibit Y)

Page 169—Chapter XIII—(Trial Minutes page 879)

Exemptions and additional rulings.

Art. 123

1. We can allow exemption, in whole in part or conditionally, from compliance with one or more rulings of this act.[2]

2. In Our name the Chief Inspector of the Shipping Inspection Service can grant exemption from compliance with one or more rulings[v] of this act in whole, in part or conditionally if extraordinary circumstances permit to do so without endangering ship and crew.

3. In our name the commission as mentioned in Art. 1f can grant exemption from compliance with one or more rulings as given in Chapter VII of this act, in whole, in part or conditionally if extraordinary circumstances permit to do so without endangering ship and crew.

4. When granting waivers as mentioned in preceding sections of this article it will only be allowed to go so far as not to come into conflict with International Treaties pertaining to the case in hand.

5. In so far as International Treaties demand such, when waivers are granted by the "Chief Inspector of the Shipping Inspection Service" or by the "Loadline Commission" certificates in duplicate are to be issued.

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[2] See ruling of Sept. 27, 1946 S. G. 2F1 and October 30, 1947 S. H. 360 incorporated in the appendix of this book.

[v] of Chap VII.

Petitioner-Appellee's Exhibit Y and AA and AB

(Exhibit Y is a book in Norwegian. Exhibit AA and AB printed below are English translation of sections of Exhibit Y)

Pages 21 and 22—Art. 2 Secs. I and II (trial minutes top page 888)

ART. 2

Page 21

1. The terms of this law are applicable to vessels registered in The Netherlands which are destined to or serve to undertake a voyage, with the exception of:

1f. Ships sailing under foreign flag and which do not come under the description as per the second section of this article under paragraph II.

2. For the application of the stipulation contained in the first section a vessel is considered to be registered in The Netherlands in the two cases mentioned hereafter:

2I. If the company by which it is operated, is established in The Netherlands.

II. If it is fitted out in The Netherlands and the crew for at least half consists of Netherlands citizens or residents of The Kingdom.

Petitioner-Appellee's Exhibit Z

Plan of "Black Gull" stowage of deck cargo

(OFFSET)

(For the convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Note

Page A431 is
large plan on
card 7.

Claimant-Appellant's (Libellant's) Exhibit 17

Plan of "Black Gull" stowage of deck cargo

(OFFSET)

(For the convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Note

Page A433 is
large plan on
card 8.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 37-A

DANGEROUS GOODS

Section 99.

1. The carriage of the substances mentioned in the present section shall be governed by the respective provisions given for each group in sub-sections 3 to 11 inclusive and by the further regulations issued by Our Minister in pursuance of sub-section 15 hereof.

• • •

(7)(c) Solid substances which are easily inflammable and which when heated to 70° Celsius may evolve combustible gases must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads which may be exposed to heating and from pipe lines which may radiate heat. If stowed on deck they may not be exposed to the direct rays of the sun.

The substances mentioned in this sub-section in (c) and substances mentioned in sub-section 3, 4, 8, 9 and 10 may not be stowed in the same space.

• • •

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

37181/39142 M.D.

We the Undersigned JOHN HUDIG & SON, having on the 10th September 1948 received application for survey from Messrs. N. V. SPEDICO, Forwarding Agents at ROTTERDAM, with the approval of Messrs. D. HUTTIG & Co., Insurance Brokers and Average Agents at ROTTERDAM, on

CALCO
NEW YORK 2.356 Bags Naphthaline.

intended for shipment to New York by s. s. "NORWALK VICTORY"

DO HEREBY CERTIFY

that having on the morning of the 10th September 1948 received notice of fire damage to the above parcel we immediately proceeded to the loading berth of the steamer and were informed that on the early morning a start was made with the transhipment of the parcel from lighter to the deck of s. s. "NORWALK VICTORY", it being intended to load the goods on the fore-deck in way of No. 1 and 2 hatches at portside and starboardside; when at about 10.30 a. m. 1.387 bags had been loaded a slingload of bags which was lowered at portside in way of No. 1 hatch at the afterpart suddenly caught fire, the cause of which could not be ascertained; the fire spread quickly over the other bags lying at portside but proper measures were taken to extinguish the fire and in a short while water was played by means of three ship's hoses and four hoses from the shore; the fire-brigade was alarmed but no assistance had to be rendered as the fire was under control at about 11 a. m. and definitely extinguished at 11.30 a. m.;

that on examination we found a large number of bags to be seriously damaged by fire; the master of s. s.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

"NORWALK VICTORY" in cooperation with Owners' superintendent and the ship's Agents decided to have the most seriously fire damaged bags discharged and not forwarded to destination; Mr. M. H. C. VAN ANDEL C. Mzn a local Surveyor, was appointed to act on behalf of the ship, without prejudice, and from 1 p. m. until late in the evening all the bags on deck of s. s. "NORWALK VICTORY" were examined as far as practicable by us and Mr. VAN ANDEL and in agreement with Owners' superintendent 450 seriously damaged bags were landed on to the quay;

that out of the quantity left on board a number of bags was damaged by fire to a less serious extent and a further number of bags was wet but it was not deemed necessary to discharge these bags;

that on the 11th September 1948 we further examined the 450 bags which had been discharged on the previous day and found this lot to be in bad condition and not fit for being reconditioned and shipped to destination; we recommended the goods to be sold to best advantage and the proceeds of sale amounted to:

450 bags actual grossweight 32.328 kilos
(including a large quantity of loose stuff)

Gross proceeds at per 1.000 kilos =	Fls. 30.19	Fls. 975.98
Cost of weighing, delivery and extra shed-rent incl. turnover-tax	Fls. 190.61	
Supervising weighing and delivery, brokerage etc.	" 59.20	
		" 249.81
NETT PROCEEDS		Fls. 726.17

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 39

that we attended the delivery and on examination of the parcel found all the bags to show traces of fire-damage;

Issued without prejudice and made subject to the terms and conditions of the Policy of Insurance of the Goods in question.

GIVEN at ROTTERDAM, this 5th day of November 1948.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

COPY OF THE NOTE OF PROTEST
S.S. "NORWALK VICTORY"

On this the eleventh day of September 1948 came and presented themselves before me, notary public, etc.:

(1) DAVID GARVIN OATES, master-mariner, residing at Baltimore, Master of the American steamship called:

"NORWALK VICTORY"

(2) etc.(names of the other members of the crew who also appeared before me), all of them serving in the said capacities on board the said vessel.

With respect to the occurrences on board the said vessel while lying at Rotterdam the party mentioned in (1) above declared and said as follows:

Whilst during the forenoon of 10th September 1948 we were discharging and loading at Rotterdam a fire broke out at 10.30 hrs. in bags of naphthalene, on deck, on the port side, in the way of No. 2 and 3 hatches. We immediately gave water with 5 ship's hoses and also started a number of fire extinguishers going, while in addition water was given with 3 shore-hoses. At 10.37 hrs. the municipal fire brigade arrived. At 10.42 hrs. we stopped giving water and after water had again been given on deck from 10.45 till 10.50 hrs. the fire was extinguished. The fire broke out in cargo taken on board from the barge "JONGE JAN", which was lying on the starboard side, probably in the last sling of cargo from the said barge, from which cargo was at that moment being loaded. The boatswain R. Dilbert was on the foredeck when the fire broke out and stated that he saw that the fire started in the last sling of cargo. At 11.30 hrs. we opened up No. 2 hold and made an examination in that hold, searching for any signs of fire, but found nothing. As

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

a result of the fire 3 tarpaulins on No. 2 hatch were damaged and 1 was completely destroyed, while in addition paintwork on the port side was damaged. About 750 bags of naphthalene were damaged by fire and by water used in extinguishing the fire. At 11.45 hrs. the fire brigade said that the fire was extinguished.

The party appearing mentioned in (1) above stated further that the damage caused to ship, ship's equipment and cargo by the fire and the action taken to extinguish the same was due solely to an occurrence which he was not reasonably able to avoid or avert.

The other parties appearing then declared and said, severally, that all the statements made by the Master contained a true account of the facts and that they confirmed the same without any qualification.

Finally, the parties appearing confirmed their statements on oath, after which they and I, the notary public, thereunto appended our several signatures.

• • •

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

VEREENIGDE DISPACHEURS
Mrs LYCKLAMA, BOELES & KRANENBURG
Mrs NAUTA, SCHADEE & LAMBERT
Mrs NOLST TRENITE, BEERMAN & BERGSMA

Mr H. SCHADEE

AFSCHRIFT DER SCHEEPSVERKLARING

S.S. "NORWALK VICTORY"

Heden de elfde September 1948 zijn voor mij Notaris enz. verschenen:

1°. David Garvin Oates Kapitein, wonede te Baltimore, gezagvoerder van het Amerik. stoom—schip genaamd "NORWALK VICTORY"

2°. enz. (namen van de mede-comparerende laden der bemanning) allen varende in gemelde hoedanigheid aan boord van genoemd schip.

De comparant sub 1 heeft omtrent de voorvallen met bovengemeld schip liggende te Rotterdam de navolgende verklaring afgelegd:

Terwijl wij des voormiddags van de 10de September 1948 te Rotterdam bezig waren met lossen en laden, brak te 10 uur 30 brand uit in balen naphtaline ann dek aan BB.zijde bij luiken 2 en 3. Wij gaven onmiddellijk water met 5 scheepsslagen en stelden mede een aantal blusapparaten in werking, terwijl ook met 3 slagen van de wal water gegeven werd. Te 10 uur 37 arriveerde de stadsbrandweer. Te 10 uur 42 hielden wij op met water geven en nadat vervolgens nog vanaf 10 uur 45 tot 10 uur 50 water aan dek was gegeven, was de brand geblust. De brand ontstond in lading overgenomen uit de lichter "Jonge Jan" welke aan SB. lag, vermoedelijk in de laatste sleng lading uit genoemde lichter, waaruit op dit moment geladen werd. De bootsman R.

Cargo and Verbeeck Claimant's (Libellant's) Exhibit 40

Dilbert was op het voordek toen de brand uitbrak en verklaarde, dat hij zag dat de brand ontstond in de laatste sleng lading. Te 11 uur 30 openden wij luik 2 en onderzochten dit luik naar eventuele tekenen van brand, doch vonden niets. Door het vuur zijn 3 presenningen op luik 2 beschadigd en 1 geheel vernield, terwijl ook verfwerk aan BB. beschadigd is. Ongeveer 750 zakken naphtaline zijn door vuur en bluswater beschadigd. Te 11 uur verklaarde de brandweer het vuur voor geblust.

En verder verklaarde de comparant sub 1, dat de door de brand en de blussingsmaatregelen veroorzaakte schade aan het schip, scheepsuitrusting en lading uitsluitend gevolg is van een voorval, dat hij redelijkerwijze niet heeft kunnen voorkomen of afwenden.—

De overige comparanten hebben vervolgens ieder voor zich verklaard, dat alle door hun gezagvoerder gedane verklaringen geheel met de waarheid overeenstemmen en dat zij die zonder enig voorbehoud bevestigen.

Ten slotte hebben alle comparanten de waarheid hunner verklaringen met ede bevestigd en met mij notaris getekend.

Voor extract conform:

(P. A431)

(P. 431) Petitioner-Appellee's Exhibit Z

CLASS.

DET NORSKE VERITAS ✠ I.A.I. WITH FREEBOARD.

MAIN MACHINERY.

ONE GÖTAVERKEN DIESELMOTOR TYPE DM 680 / 1500 V G 9, CYL. 9, 2 CYCLE, SINGLE ACTING, DIRECT REVERSIBLE, WITH SOLID INJECTION. TOTAL OUTPUT 6500 BHP. AT 112 R.P.M.

AUX. MACHINERY.

THREE GÖTAVERKEN DIESELGENERATORS TYP G5, CYL 5, 4 CYCLE, SINGLE ACTING, EACH OF 300 BHP. AND 200 KW. AT 350 R.P.M. ONE LISTER DIESELGENERATORS TYPE 3, 1PH, CYL 3, 4 CYCLE, SINGLE ACTING OF 24 BHP AND 15 KW. AT 1200 R.P.M.

FIRE EXTINGUISHING.

CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEEN-DECKS.

REFR. PLANT FOR CARGO.

OF FREON - TYPE 2 COMPRESSORS. DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	4929.19	6215.78	7269.19	7329.06
NET. -"-	2846.16	4843.28	5668.07	5463.62
UNDER DECK	4171.87	4126.61	4171.87	4191.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB. FEET	BALES CUB. MET.	BALES CUB. FEET
#1 HOLD	3380	119340	3068	108380
#2 -"-	1440	50860	1322	46670
#3 -"-	2624	92630	2393	82370
#4 -"-	1774	62820	1546	54550
TOTAL UNDER DECK	9218	325150	8330	293770
#1 TWEENDECK	978	34530	876	30930
#2 -"-	951	33540	879	31050
STRONGROOM	104	3650	88	3040
#3 TWEENDECK	387	13620	359	12660
#4 -"-	1135	40080	1032	36450
STRONGROOM	148	5250	131	4640
#5 TWEENDECK	1160	40960	1063	37530
TON. WELL	87	3080	77	2700
TOTAL TWEENDECK	4951	174760	4505	159060
#3 TWEENDK STORE (REFR SPACE)	235	8300	235	8300
#3 -"- PORT. -"-	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	14544	513510	13305	469430
#1 DEEPTANK STARB.	219	7730	196.5	6935
#1 -"- PORT.	219	7730	196.5	6935
#2 -"- STARB.	256	9030	227.5	8035
#2 -"- PORT.	256	9030	227.5	8035
TOTAL CARGO TANKS	950	33520	848	29940
TOTAL CARGO SPACE	15484	547030	14145	499370

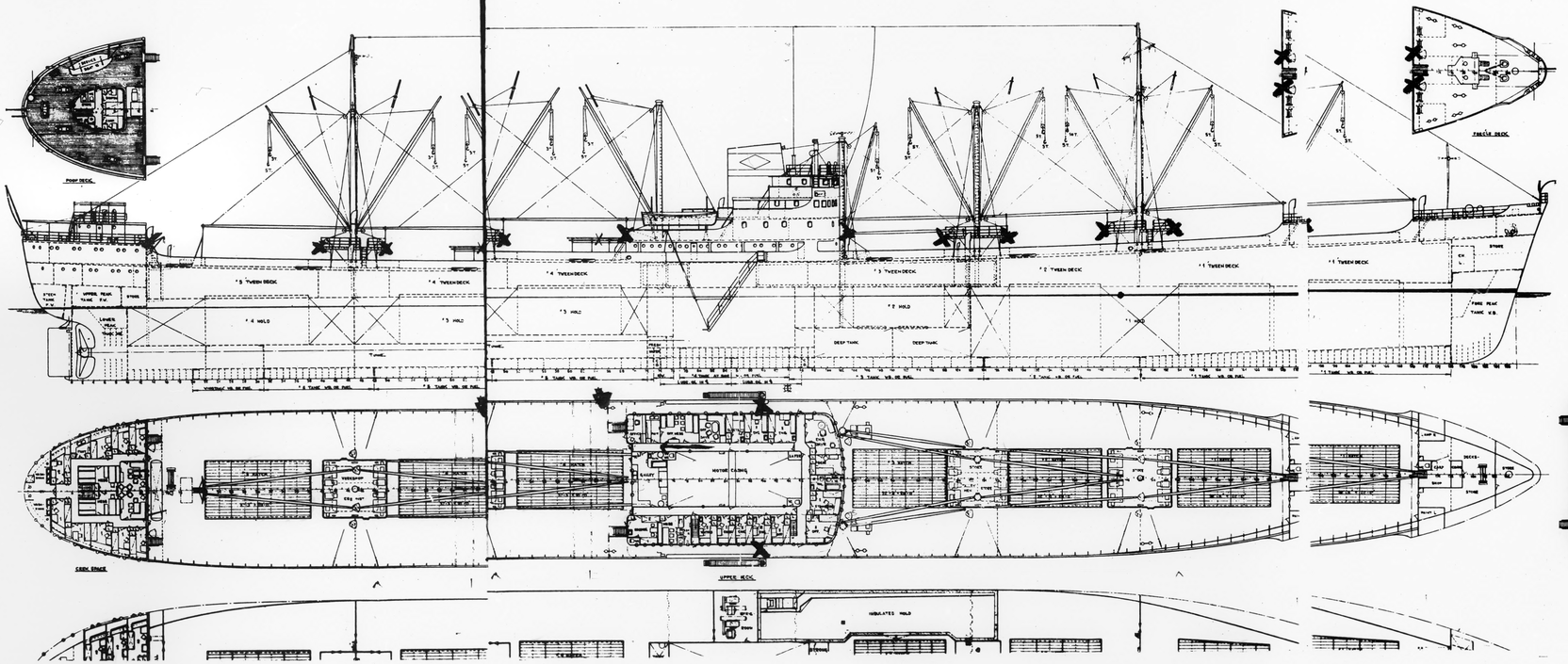
OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES.

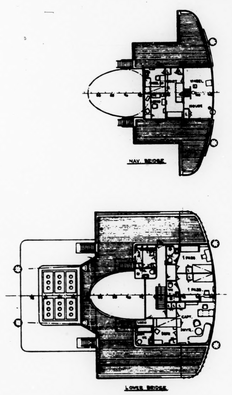
COMPARTMENT.	FRESH WATER SPEC GRAV 1.000 TONS & 10½ KG	SALT WATER SPEC GRAV 1.025 TONS & 10½ KG	FUEL OIL SPEC GRAV 0.9 TONS & 10½ KG
DOUBLE BOTTOM.			
#1 TANK	121.4	124.4	109.9
#2 -"- STARB.	98.2	100.7	88.9
#2 -"- PORT.	98.2	100.7	88.9
#3 -"- STARB.	157.8	161.7	142.8
#3 -"- PORT.	157.8	161.7	142.8
#4 -"- STARB.	159.8	163.7	144.7
#4 -"- PORT.	159.8	163.7	144.7
#5 -"- STARB.	115.7	118.6	104.1
#5 -"- PORT.	115.7	118.6	104.1
#6 -"- STARB.	42.3	43.3	38.1
#6 -"- PORT.	42.3	43.3	38.1
WING TANK STARB.	53.2	54.5	47.9
-"- PORT.	62.9	64.5	56.6
LUBRICATING OIL FRAME 85-86			24.3
-"- -"- -"- 74-85			24.3
FRESH WATER TANK LOWER FRAME 73-74 STARB.	11.7		
-"- -"- -"- -"- PORT.	7.7		
-"- -"- -"- UPPER -"- STARB.	31.5		
-"- -"- -"- -"- -"- PORT.	23.6		
TOTAL IN DOUBLE BOTTOM	1380.1	1414.5	1245.3
FORE PEAK TANK	87.0	89.2	
AFTER -"- -"-	70.0	71.7	
F.W. TANK AFT. FRAME 70-69	98.0		
STERN TANK F.W.	35.6		
TOTAL BALLAST CAPACITY		1575.4	
-"- BUNKER -"-			1245.3
#1 DEEPTANK STARB.	231.8	237.6	208.6
#1 -"- PORT.	231.8	237.6	208.6
#2 -"- STARB.	269.6	276.3	242.6
#2 -"- PORT.	269.6	276.3	242.6
TOTAL CARGO TANKS	1002.8	1027.8	902.4

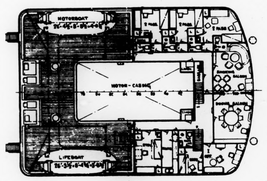
BALE CAPACITIES ARE TAKEN TO INSIDE OF BATTENS AND TO UNDERSIDE OF BEAMS.
GRAIN -"- -"- -"- -"- TO TOP -"- -"- OF BEAMS.
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

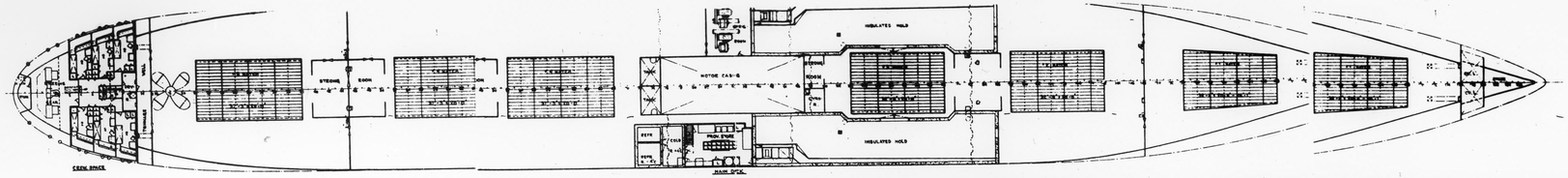
INT. LOAD LINE FREEBOARD	
TROPICAL FRESH WATER	2'- 3"
SUMMER FRESH WATER	2'- 9½"
TROPICAL SALT WATER	2'- 9¾"
SUMMER SALT WATER	3'- 4½"
WINTER SALT WATER	3'- 10¾"

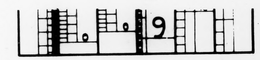
LOAD LINE FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
TROPICAL FRESH WATER 2'- 3"	8183	26'- 10 5/16"	9080
SUMMER FRESH WATER 2'- 9½"	8017	26'- 3 5/16"	8800
TROPICAL SALT WATER 2'- 9¾"	8011	26'- 3 1/16"	9100
SUMMER SALT WATER 3'- 4½"	7846	25'- 8 5/16"	8800
WINTER SALT WATER 3'- 10¾"	7681	25'- 2 3/8"	8500











SCALE 0 5 10 15 METRES

SCALE 5 10 15 20 30 METRES

LOAD SCALE

DRAFT IN METRES	D.W. TONS SALT WATER 1.025	D.W. TONS FRESH WATER 1.000	DRAFT IN FEET.	TONS PER INCH IN SALT WATER	MOMENT TO ALTER TRIM ONE INCH IN FOOT TONS.
8.0	9000	9000	26	47	1200
7.5	8500	8500	25	46	1100
7.0	8000	8000	24	45	1000
6.5	7500	7500	23	44	900
6.0	7000	7000	22	43	800
5.5	6500	6500	21	42	
5.0	6000	6000	20	41	
4.5	5500	5500	19	40	
4.0	5000	5000	18		
3.5	4500	4500	17		
3.0	4000	4000	16		
	3500	3500	15		
	3000	3000	14		
	2500	2500	13		
	2000	2000	12		
	1500	1500	11		
	1000	1000	10		
	500	500	9		
	0	0			

M/S 'BLACK GULL'

OWNERS: SKIPSAKTIESELSKAPET JØLUND, OSLO.
(SIGURD HERLOFSON & CO. A/S)

BUILT BY: ÖRESUNDSVARVET AB, LANDSKRONA, SWEDEN.

1948.

LENGTH OVER ALL	458'-5"	139.73 M.
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH -"- TO SECOND DK	29'-0"	8.84 "
DEPTH -"- TO UPPER DK	38'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	25'-8 7/16"	7.85 "

Z 73

0-093-029

A. B. KOMA, STOCKHOLM

A 442

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

* * *

DANGEROUS GOODS

BY

DR. JULIUS AEBY

Consulting Chemist to the : RED STAR LINE : at Antwerp

* * *

43, RUE DE L'EMPEREUR

ANVERS

1910

* * *

PREFACE

For nearly ten years, I have supplied to the great shipping companies of this city, information as to the properties of chemical products from the point of view of their possible danger in transport. I have frequently acted as expert, before the law-courts, or for insurers or assured, concerning statements of averages caused by the presence in cargo of inflammable, explosive or otherwise troublesome substances.

In the course of this almost daily experience, it has become evident to me that many errors and misapprehensions exist, and that the need is felt of a book, at once technical and popular, which can be consulted by those interested in the subject. For this reason, I have decided to present in this volume the fruits of my experience, together with data that I have been able to collect from the most diverse sources.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

It is scarcely necessary to add that the results of my labours must needs be incomplete, and that in subsequent editions many features will be modified. One cannot at once produce a work that will satisfy interests so divergent as those of maritime commerce, of insurers and of a public needing protection.

• • •

HOW THIS BOOK SHOULD BE USED

The French, English and German names, together with the common synonyms of several hundred different products are arranged in alphabetical order in the index. Beside each name in the index a figure is given, referring to the number in the text. Here the reader will consult the notes on the substance, using the language most familiar to him. He will also find, above and below the principal name, its chemical formula, with notice as to whether the body is solid or liquid, organic or inorganic.

The chemical formula has no other (raison d'être) than that of facilitating, if occasion arises, the identification of a substance. As to the mention of *solid* or *liquid,* it is scarcely necessary to remark on its utility. *Organic compound* signifies here that the product is capable of burning when fire is applied, as contrasted with *inorganic compounds* which have generally not this property.

The interpretation that will be given to the notes characterizing each body will doubtless vary according to the various categories of readers. I cannot do more than earnestly request them to read the introductory and explanatory notes that follow, so that they may be in a position to use this book in the spirit in which it has been written.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

A certain space below the name of each product has been reserved for the manuscript notes of the reader.

* * *

e) Substances of which the dust is inflammable, as colophony and naphthalene.

f) Substances capable of gathering heat and of igniting by reason of the organic bodies which they impregnate, such as fats and oils packed in cotton waste.

Mention may here be made of substances such as the bichromates of potassium and sodium which, though presenting no difficulties so far as they themselves are concerned, render paper, for instance, very easily inflammable when impregnated with them. In a case of goods damaged by sea-water, I was shown barrels containing bichromate of sodium. These barrels had been made a little damp by sea-water, with the result that the packing paper with which the interior of the casks was lined, had become impregnated with bichromate. Now this paper, thus impregnated, was much more easily inflammable than ordinary paper and constituted a greater danger by reason of this secondary cause.

A few words may here be said regarding nitrate of soda, a chemical manure which today gives rise to such important transactions. Despite a rather widespread idea to the contrary, nitrate in itself presents no danger; it will not even take fire and one may plunge hot iron into it without harmful results. But since nitrate is always more or less damp, and, further, since it absorbs moisture from the air, it impregnates the bags in which it is packed, and these bags when they have become dry again, are very easily inflammable.

Cargo and Verbeeck Claimants' (Libellants') Exhibit 20

An expert captain, sent to Chili by an insurance company, expresses himself in the following sense:

(The origin of the frequent conflagrations on nitrate ships can usually be traced to carelessness. On many sailing-boats and steamers the holds are not closed at night and are therefore exposed to danger. This is particularly the case in the hold near the men's quarters, where the sailors smoke and throw matches and the ends of cigarettes on the bags of nitrate. Insurance companies ought to require all the holds to be closed every evening, and they should forbid the use of petroleum lamps and naked flames.)

* * *

219

NAPHTALENE or Albo-carbon
Solid Coal tar camphor
Organic compound
Strong smell. Inflammable. Its vapors are explosive.
More dangerous when not pure.

* * *

(Page A 433)

CLASS.

DET NORSKE VERITAS ✠ I.A.I. WITH FREEBOARD.

MAIN MACHINERY.

ONE GÖTAVERKEN DIESELMOTOR TYPE DM 680/1500 V.G.9. CYL.9. 2 CYCLE. SINGLE ACTING. DIRECT REVERSIBLE. WITH SOLID INJECTION. TOTAL OUTPUT 6500 BHP. AT 112 R.P.M.

AUX. MACHINERY.

THREE GÖTAVERKEN DIESELGENERATORS TYP G5. CYL 5. 4 CYCLE. SINGLE ACTING. EACH OF 300 BHP. AND 200 KW. AT 350 R.P.M. ONE LISTER DIESELGENERATORS TYPE 3. 2PH. CYL 3. 4 CYCLE. SINGLE ACTING OF 24 BHP. AND 15 KW. AT 1200 R.P.M.

FIRE EXTINGUISHING.

CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEEN-DECKS.

REFR. PLANT. FOR CARGO.

OF FREON - TYPE. 2 COMPRESSORS. DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	4629.49	6215.78	7294.10	7320.04
NET. -"-	2846.16	4843.08	5668.07	5463.62
UNDER DECK	4171.87	4126.61	4171.87	4141.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB FEET	BALES CUB MET.	BALES CUB FEET
#1 HOLD	3380	119340	3068	108380
#2 -"-	1440	50860	1322	46670
#3 -"-	2524	89130	2333	82370
#4 -"-	1770	62520	1546	54550
TOTAL UNDER DECK	9113	321850	8320	293770
#1 TWEENDECK	678	24530	876	30950
#2 -"-	991	33560	976	31030
STRONGROOM	104	3650	88	3090
#3 TWEENDECK	387	13620	358	12640
#4 -"-	1135	40080	1032	36450
STRONGROOM	148	5250	151	5340
#5 TWEENDECK	1160	40960	1063	37530
TOW. WELL	87	3080	77	2700
TOTAL TWEENDECK	4691	1747160	4505	154060
#3 TWEENDK STAIRS (KEEP SPACE)	235	8300	235	8300
#3 -"- PORT -"-	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	14544	513510	13295	469450
#1 DEEPTANK STARB.	219	7730	196.5	6935
#1 -"- PORT.	219	7730	196.5	6935
#2 -"- STARB.	256	9030	227.5	8035
#2 -"- PORT.	256	9030	227.5	8035
TOTAL CARGO TANKS	950	33520	848	29940
TOTAL CARGO SPACE	15494	547030	14143	499370

OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES

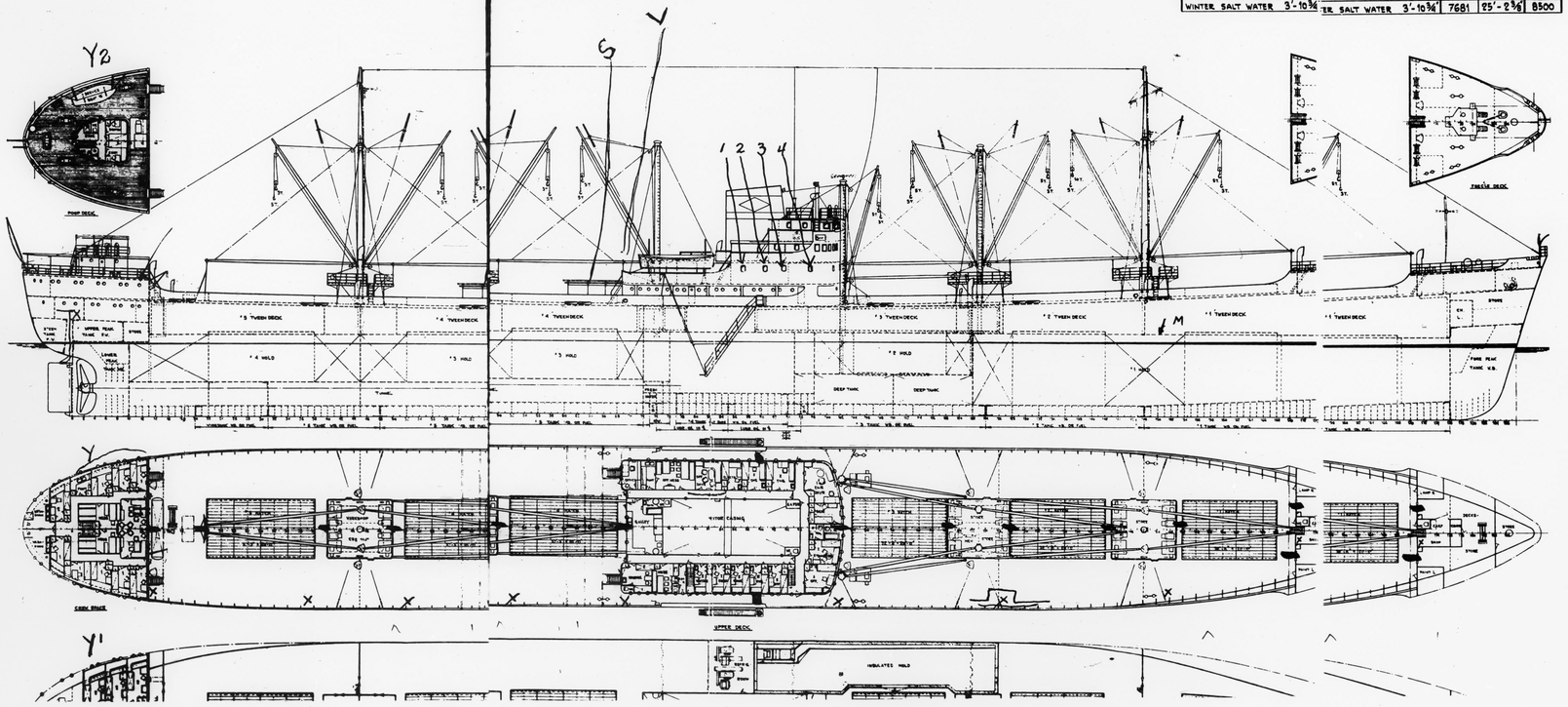
COMPARTMENT.	FRESH WATER SPEC GRAV 1.0 TONS	FRESH WATER SPEC GRAV 1.0 CUB FEET	SALT WATER SPEC GRAV 1.025 TONS	SALT WATER SPEC GRAV 1.025 CUB FEET	FUEL OIL SPEC GRAV 0.9 TONS	FUEL OIL SPEC GRAV 0.9 CUB FEET
DOUBLE BOTTOM.						
#1 TANK			121.4	134.4	109.3	
#2 -"- STARB.			98.2	100.7	88.3	
#2 -"- PORT.			98.2	100.7	88.3	
#3 -"- STARB.			157.8	161.7	142.0	
#3 -"- PORT.			157.8	161.7	142.0	
#4 -"- STARB.			151.4	155.7	140.1	
#4 -"- PORT.			162.7	166.8	146.4	
#5 -"- STARB.			115.7	118.6	104.1	
#5 -"- PORT.			115.7	118.6	104.1	
#6 -"- STARB.			42.3	43.3	38.1	
#6 -"- PORT.			42.3	43.3	38.1	
WING TANK STARB.			53.2	54.5	47.8	
-"- -"- PORT.			62.9	64.9	56.6	
LUBRICATING OIL FRAME 85-86						24.3
-"- -"- -"- 74-85						24.3
FRESH WATER TANK LOWER -"-	71-72 STARB.	11.7				
-"- -"- -"- -"-	71-72 PORT.	7.7				
-"- -"- -"- UPPER -"-	71-72 STARB.	31.5				
-"- -"- -"- -"-	71-72 PORT.	23.6				
TOTAL IN DOUBLE BOTTOM		1380.1	1414.5			1245.3
FORE PEAK TANK		87.0	89.2			
AFTER -"- -"-		70.0	71.7			
F.W. TANK AFT. FRAME 70-69		98.0				
STERN TANK F.W.		35.6				
TOTAL BALLAST CAPACITY			1575.4			
-"- BUNKER -"-						1245.3
#1 DEEPTANK STARB.		231.8	237.6			208.6
#1 -"- PORT.		231.8	237.6			208.6
#2 -"- STARB.		265.6	276.3			242.6
#2 -"- PORT.		265.6	276.3			242.6
TOTAL CARGO TANKS		1002.8	1027.8			902.4

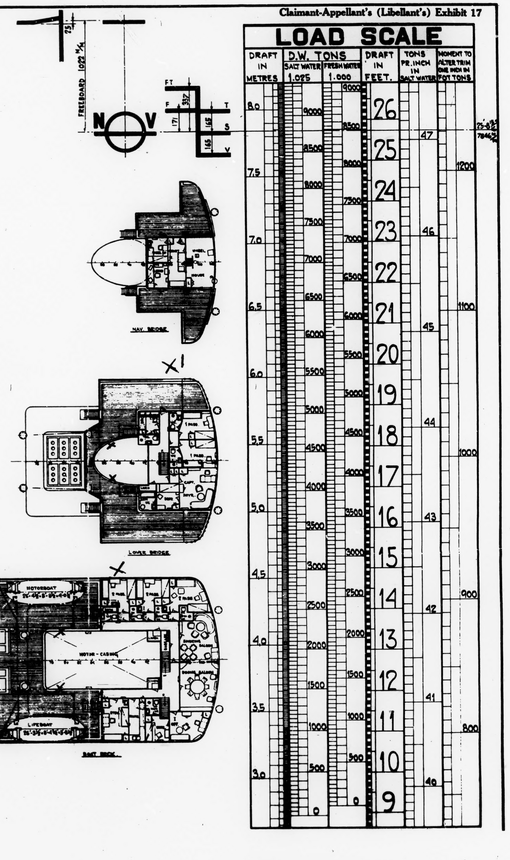
BALE CAPACITIES ARE TAKEN TO INSIDE OF BATTENS AND TO UNDERSIDE OF BEAMS.
GRAIN -"- -"- -"- OUTSIDE OF FRAMES -"- -"- TOP -"- -"-
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

A/S. KOMA, STOCKHOLM

INT. LOAD LINE	FREEBOARD
TROPICAL FRESH WATER	2'-3"
SUMMER FRESH WATER	2'-9½"
TROPICAL SALT WATER	2'-9¾"
SUMMER SALT WATER	3'-4¼"
WINTER SALT WATER	3'-10¾"

LOAD LINE	FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
CAL FRESH WATER	2'-3"	8183	26'-10⅜"	9080
ER FRESH WATER	2'-9½"	8017	26'-3⅝"	8800
ICAL SALT WATER	2'-9¾"	8011	26'-3⅜"	9100
MER SALT WATER	3'-4¼"	7846	25'-8⅝"	8800
ER SALT WATER	3'-10¾"	7681	25'-2⅜"	8500





LOAD SCALE

DRAFT IN METRES	D.W. TONS SALT WATER	D.W. TONS FRESH WATER	DRAFT IN FEET.	TONS PER INCH IN SALT WATER	MOMENT TO ALTER TRIM ONE INCH IN SALT WATER TONS
8.0	9000	8500	26	47	1200
7.5	8500	8000	25		
7.0	8000	7500	24	46	1100
6.5	7500	7000	23		
6.0	7000	6500	22	45	1000
5.5	6500	6000	21		
5.0	6000	5500	20	44	900
4.5	5500	5000	19		
4.0	5000	4500	18	43	800
3.5	4500	4000	17		
3.0	4000	3500	16	42	
	3500	3000	15		
	3000	2500	14	41	
	2500	2000	13		
	2000	1500	12	40	
	1500	1000	11		
	1000	500	10		
	500	0	9		

SCALE 0 5 10 0

SCALE 0 50 100 150 200 METRES.

M/S "BLACK GULL"

OWNERS: SKIPSAKTIESELSKAPET JØLUND, OSLO.
[SIGURD HERLOFSON & CO. A/S]
BUILT BY: ÖRESUNDSVARVET AB., LANDSKRONA, SWEDEN.
1948.

LENGTH OVER ALL	458'-5"	139.73 M.
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH -"- TO SECOND DK	29'-0"	8.84 "
DEPTH -"- TO UPPER DK	36'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	25'-8⅝"	7.85 "

0-095-099

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SUPREME COURT U. S.
No. ...
JOHN T. FEY, Clerk

United States Court of Appeals

FOR THE SECOND CIRCUIT

In the Matter

of the

PETITION OF SKIBS A/S JOLUND as owner of the M/S "BLACK GULL" for exoneration from or limitation of liability.

MARIA A. VERBEECK, *et al.*,
Claimants-Appellants.

MARIA A. VERBEECK, *et al.*,
Libellants-Appellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent-Appellee.

AMERICAN SMELTING & REFINING CO., *et al.*,
Libellants-Appellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent-Appellee.

APPENDIX ON BEHALF OF CARGO CLAIMANTS-LIBELLANTS-APPELLANTS AND DEATH CLAIMANTS-LIBELLANTS-APPELLANTS

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Cargo and Death Claimants-Libellants-Appellants.

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United States District Court

SOUTHERN DISTRICT OF NEW YORK

Ad. 174–34

(A)

In The Matter of the Petition of

SKIBS A/S JOLUND

as owner of the motor ship "BLACK GULL", in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952

Docket Entries

DATE		
Aug	7-52	Filed petition & stip. for pet. costs ($250. National Surety Corp.)
Aug	8-52	" order directing monition to issue and enjoining suits and directing filing of claims with the Clerk of the Court on or before September 16th, 1952 Knox Ch. J.
Aug	8-52	" order of reference for appraisal and provisional appraisal referred to Curtis E. Rouse Esq. Commissioner Knox Ch. J.
Aug	8-52	" order for ad interim stipulation Knox Ch. J.
Aug	8-52	" ad interim stipulation ($218,563.00 National Surety Corp.) approved Knox Ch. J.
Aug	21-52	" order amending petition Edelstein J.
Aug	22-52	Issued amended monition ret 9-30-52 Clerk

Docket Entries

DATE		
Aug 29-52	Filed	claim of Mr. and Mrs. Jan A. Driesprong and Wilhelmina Driesprong
Sep 12-52	"	notice of appearance of Industrial Sales Corp.
Sep 12-52	"	stip for costs ($250. Ind. Ins. Co. of N. A.)
Sep 12-52	"	claim of Pieter Spaanderman
Sep 12-52	"	claim of J. de Nobel
(B)		
Sep 12-52	"	motion papers to amend order for issuance of montion ret 9-16-52
Sep 8-52	"	claim of Mr & Mrs Thomas D. Leeson
Sep 9-52	"	" " Olav Karlsen
Sep 15-52	"	" " Herbert Wendel
Sep 15-52	"	" " Ezl. Dunwoody
Sep 16-52	"	" " Werner S. Brunn
Sep 10-52	"	" " H. C. Redmann Inc.
Sep 10-52	"	claims of Hafnia Ham Co. Inc. & A/S Dansk Skinkekogeri
Sep 16-52	Memo end re-issuance of amended monition Motion granted on default Ryan J.	
Sep 22-52	Filed	affidavit of mailing
Sep 22-52	"	order extending time to file claims etc to 11-28-52 Ryan J.
Sep 26-52	"	claim of Rudar Glemmestad
Sep 26-52	"	" " Gunvor Ring Galgeberg
Sep 26-52	"	" " Nurd Bourtz
Sep 26-52	"	" " Oion Friks Vestergaard
Sep 26-52	"	" " Marie Helene Johansen
Sep 26-52	"	" " Jan Kauel Slophoom
Sep 26-52	"	" " Albert Olsen
Sep 26-52	"	" " Karsten Bowe
Sep 26-52	"	" " Harald Farstad

Docket Entries

DATE		
Sep	26-52	Filed claim of Arne Folling Eilertsen
Sep	26-52	" " " Martha Berg Aas
Sep	26-52	" " " Leif Olafsen
Sep	26-52	" " " Harold M. Olaussen
Sep	26-52	" " " Andreas Aagaard
Sep	26-52	" " " Kaare B. Blixt
Sep	26-52	" " " Odd Wold Huken
Sep	26-52	" " " Deurne Noord
Sep	26-52	" " " Jore Samset
Sep	26-52	" " " Torlof Hansen
Sep	26-52	" " " Kai Frederick Gundersun
Sep	26-52	" " " Tor J. Hansen
Sep	26-52	" " " Asbjorn Kamphuvg
Sep	26-52	" " " Dom Hugo
Sep	26-52	" " " Leif Oken
Sep	26-52	" " " Cato Voje
(C)		
Sep	26-52	" " " Cato Voje
Sep	26-52	" " " Leif Olsen
Sep	26-52	" " " Gslyarn Jensen
Sep	26-52	" " " Akallej Hansen
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs of kin of Egil John Torgersen
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs of kin of Rolf Egil Ystenes
Sep	26-52	" Belgian Transport Workers' Union, as next friend and next of kin of Josef Verbeeck
Sep	26-52	" Norwegian Seamen's Association, as next friend of the heirs and next of kin of Ole Kristian Andersen

Docket Entries

DATE		
Sep	26-52	Filed letter re claim of A. Nietvelt
Sep	30-52	" claim of United Fruit Company
Sep	30-52	" answer of Kaare B. Blixt
Sep	30-52	" amended monition with marshals return memo end. proc. made defaults noted
Oct	6-52	" letter and claim of The Montan Transport-Gesellschaft m.b.h. by claim agent George Mueller of Allianz Versicherungs-Aktiengesellschaft, et al.
Oct	3-52	" letter dated 9/27/52 addressed to the US Marshal from Erik Wilberg re: claim of Mrs. Bjorg Andersen.
Oct	8-52	" notice of petitioner's exception to answer of Kaare B. Blixt.
Oct	14-52	" letter from French Chamber of Commerce re claim of Albert Kremper
Oct	20-52	" claim by George Mueller as Claims Agent of the Allianz etc.
Nov	21-52	" Motion Papers to amend order dated Aug 7, 1952 Motion granted
Nov	25-52	Memo end. on motion to amend order dated dated Aug 7, 1952 Motion granted on default I. R. Kaufman J.,
Nov	25-52	Filed order allowing filing of answers nunc pro tunc I. R. Kaufman J.
Nov	28-52	" order amending orders to file proof of claims to 1-28-53 I. R. Kaufman J.
Dec	4-52	" stip. for costs ($250. National Surety Corp.)

Dec	4-52	" answer of Jan A. Driesprong et al.
Dec	29-52	" answer of Olav Karlsen
Jan	8-53	" claim of Wm. S. Febiger Co. and Intercontinental Wool Company

Docket Entries

DATE		
Jan	8-53	Filed claim of United Hat Fur Cutting Company
(D)		
Jan	8-53	" " " Atkinson Haserick & Company
Jan	8-53	" " " S. H. Waldstein Co. Inc.
Jan	8-53	" " " Munro Kincaid Mottla Inc.
Jan	8-53	" " " Cordingley Company
Jan	8-53	" " " Western Diary Products Inc.
Jan	8-53	" " " The Enterprise Manufacturing Company of Pa.
Jan	8-53	" " " Irving M. Sobin Co. Inc.
Jan	8-53	" " " Maryland Trading Corp.
Jan	8-53	" " " Bracht & Co., Inc.
Jan	8-53	" " " Robert S. Fish & Co. Inc.
Jan	8-53	" " " Kreglinger, Inc.
Jan	8-53	" " " Richard M. Ott & Sons, Inc.
Jan	8-53	" " " S K F Industries Inc.
Jan	8-53	" " " Beatty & Hyde, Inc.
Jan	12-53	" " " J M Trading Corp.
Jan	12-53	" " " Federal Liquors Ltd.
Jan	15-53	" " " Anglo Fabrics Co Inc.
Jan	15-53	" " " Nicholson & Company
Jan	16-53	" " " Norge Boats Inc.
Jan	16-53	" " " Robert A Hurley & Co Inc.
Jan	16-53	" " " Jos. Sultan & Sons Inc.
Jan	19-53	" " " Capital Airlines
Jan	19-53	" " " Richard W. Homer & Company
Jan	19-53	" " " Samuel Zeitlin's Sons
Jan	19-53	" " " Franklin & Company
Jan	19-53	" " " Industrial Sales Corporation
Jan	19-53	" answer of Olav Karlsen
Jan	20-53	" claim of Mandel Brothers Inc.

Docket Entries

DATE		
Jan	20-53	Filed claim of I. Reifsnyder Son & Co.
Jan	20-53	" " " Otis McAllister & Co.
Jan	22-53	" " " Monsanto Chemical Co.
Jan	22-53	" " " Frieman Knitwear Corporation.
Jan	22-53	" " " Columbia Export Co. Inc.
Jan	22-53	" " " Schwabach & Company
Jan	22-53	" " " Paul A. Straub & Co. Inc.
Jan	22-53	" " " Marble Supply Corporation of America.
Jan	22-53	" " " A. H. Helmig & Co. Inc.
Jan	22-53	" " " Wool Distributing Corporation.
Jan	22-53	" " " Jos. Rosenthal's Sons Inc
Jan	22-53	" " " Ezl Dunwoody Co.
Jan	22-53	" " " Marum Knitting Mills Inc.
Jan	22-53	" " " Georg Wertheimer
Jan	22-53	" " " Monsanto Chemical Company
Jan	23-53	" " " Browning Chemical Corporation.
Jan	23-53	" " " William Steck & Co. Inc.
Jan	23-53	" notice of motion to extend time to file claims to 3-27-53 ret. 1-27-53
Jan	23-53	" claim of F. Schumacher & Co.
Jan	23-53	" " " Bernard Ulmann Co. Inc.
Jan	23-53	" " " Metasco Inc.
Jan	23-53	" " " Mitropa Corporation
Jan	23-53	" " " George Scheer Co. Inc.
Jan	23-53	" " " Fein & Co. Inc.
Jan	23-53	" " " Imperial International Corp.
Jan	23-53	" " " Parker Machine Co. Inc.
Jan	23-53	" " " Christopher Smiles & Co. Inc.
Jan	23-53	" " " Innis Speiden & Co. Inc.
Jan	23-53	" " " A. L. Erlanger Company Inc.

Docket Entries

DATE					
Jan	23-53	Filed	claim	of	The Baker Castor Oil Company
Jan	23-53	"	"	"	Frank B. Healis & Co Inc.
Jan	26-53	"	"	"	Federated Department Stores Inc., The F. & R. Lazarus & Co. Div.
Jan	26-53	"	"	"	Frederick E. Aubel, Jr, et ano. d/b/u F. & E. Aubel.
Jan	26-53	"	"	"	Fred H. Lenway & Co. Inc.
Jan	26-53	"	"	"	Jacky Maeder & Co.
Jan	26-53	"	"	"	J. Shore & Co.
Jan	26-53	"	"	"	Wool Distributing Corp.
Jan	26-53	"	"	"	W. W. Windle Company.
Jan	26-53	"	"	"	B. S. Bergesen & Jorgen Krag, co-partners d/b/u Frosty Foods Co.
Jan	26-53	"	"	"	Imex S. A.
Jan	26-53	"	"	"	S. Rosenfelder & Son Inc.
Jan	26-53	"	"	"	J. Eisenberg, Inc.
Jan	26-53	"	"	"	Carl M. Loeb, et al d/b/u Carl M. Loeb, Rhoades & Company.
Jan	26-53	"	"	"	H. M. Koenigswerther Inc.
Jan	26-53	"	"	"	Ullmann-Allied Overseas Associates, Ltd.
Jan	26-53	"	"	"	Standard Sales Steel Co. Inc.
Jan	26-53	"	"	"	Miller Products Export Corp.
Jan	27-53	"	"	"	Archer-Daniels-Midland Company
Jan	27-53	"	"	"	Frank A. G.
Jan	27-53	"	"	"	Lador S. A.
Jan	27-53	"	"	"	Andrew Fisher Cycle Co. Inc.
Jan	27-53	"	"	"	D. L. Sterling & Sons
Jan	27-53	"	"	"	Import-Export Industries Inc.

Docket Entries

DATE		
Jan	27-53	Filed claim of Hohenberg Co. Inc.
Jan	27-53	" " " Atlanta Trading Corp.
Jan	27-53	" " " American Express Co.
Jan	27-53	" " " Colonial Mirror & Glass Corp.
Jan	27-53	" " " Merino Wool Corp.
Jan	27-53	" " " Rembert Wurlitzer
Jan	27-53	" " " Garden Supply Sales Corp.
Jan	27-53	" " " Dickersons Overseas Co. etc.
Jan	27-53	" " " Reliance International Mfg. Co.
Jan	28-53	" " " William T. Newbold etc.
Jan	28-53	" " " Kenneth S. Magoon, et al.
Jan	28-53	" " " Firma J. Van Beelen C. V.
Jan	29-53	" " " Modern Exportation
Jan	29-53	" " " American Smelting & Refining Co.
Jan	29-53	" " " Bell Telephone Manufacturing Company S.A.
Jan	29-53	" " " Societe Des Mines Et Fonderies etc.
Jan	29-53	" " " A. Samyn Permandt
Jan	29-53	" " " Union Des Fabriques etc.
Jan	27-53	Memo endorsed on motion papers filed 1/23/53. Granted Conger, J.
Jan	30-53	Filed claim of Ameurope Metals Inc.
Jan	30-53	" " " Stein Hall & Co Inc.
Jan	30-53	" " " Fallani & Cohn Inc.
Jan	30-53	" " " International Expediters Inc.
Jan	30-53	" " " North & Central American Hide Corp.
Jan	30-53	" " " W W Windle Company
Jan	30-53	" " " Gotaas Export Corp.
Feb	5-53	" " " Walter H. Rothschild & Company Inc.

Docket Entries

DATE		
Feb	5-53	Filed claim of A. De Swaan Inc.
Feb	5-53	" " " Ernest Adler Co. Inc.
Feb	5-53	" " " American Overseas Corporation
Feb	5-53	" " " F. H. Taussig
Feb	5-53	" " " Associated Metals & Minerals Corporation
Feb	5-53	" " " O'Neill Brothers Inc.
Feb	5-53	" " " Robt. Jowitt & Sons Ltd.
Feb	5-53	" " " Willich & Company
Feb	5-53	" " " Pohjola Insurance Company
Feb	4-53	" Order extending time to file claims to 3-27-53 etc. Conger J.
Feb	5-53	" claim of the Travelers Fire Ins. Co.
Feb	6-53	" " " " The Atlantic Works
Feb	11-53	" " " " Budde & Westermann
Feb	13-53	" " " " New Amsterdam Import Co. Inc.
Feb	18-53	" claim of D. Benedetto Inc.
Feb	13-53	" " " C. J. Van Houten & Zoon N.V.
Feb	24-53	" " " Stein Hall & Company Inc.
Feb	24-53	" " " Frederick H. Cone & Co. Inc.
Feb	24-53	" " " Delmey Trading Corp.
Mar	3-53	" " " Interstate Casing Corp.
Mar	6-53	" " " Modern Glass & Supply Co.
Mar	12-53	" " " Albert Kremper
Mar	13-53	" " " Switzerland General Ins. Co. Ltd.
Mar	17-53	" " " European Chemical Co. Inc.
Mar	18-53	" " " Mercaderias Peruanas S.A.
Mar	18-53	" " " Meyerhans & Cie. S.A.
Mar	18-53	" " " Etablissements Francois Masurel Freres

Docket Entries

DATE	
Mar 20-53	Filed claim of B N S International Sales Corp.
Mar 20-53	" " " Touraine Flowers Inc.
Mar 20-53	" " " Cosa Corporation
Mar 20-53	" " " Baloise Marine Ins Co. Ltd.
Mar 23-53	" " " W L M Bensdorp Co.
Mar 25-53	" " " N V Tweka Tricotfabrieken
Mar 26-53	" " " United Nations
Mar 26-53	" " " Andels-Svineslagteriet i Kolding
Mar 26-53	" " " Charles Censor
Mar 26-53	" " " Blake & Boyle
Mar 26-53	" " " Garnindustrie G M B H
Mar 26-53	" " " A/S Dansk Kodekstrakt Co Aabenraa
Mar 26-53	" " " Duesberg-Bosson Machines Textiles S P R L
Mar 26-53	" answer " United Fruit Company
Mar 26-53	" answer " American Smelting & Refining Co.
Mar 26-53	Filed stip. for claimant's costs (American Smelting & Refining) $250. Indem. Ins. Co. of North America
July 17-53	Filed affdvt & show cause order—Wurttembergische und Badische, etc. may file claim nunc pro tunc as of 3-27-53 & to file answer pet'n nunc pro tunc, etc.—Memo endorsed—Granted—no opposition—settle order—Weinfeld, J.
July 21-53	Filed affdvt. & notice of motion—Permit M. A. Verbeeck, et al. to file claim nunc pro tunc, etc.—ret. 7-28-53.
July 23-53	Filed order permitting Wurttembergische und Badische etc. to file claim nunc pro tunc as of 3-27-53 at 10:00 A.M., etc.—Weinfeld, J.

Docket Entries

DATE	
July 23-53	Filed note of issue for trial.
July 28-53	Memo endorsed on motion of 7-21-53—Granted on default—Dimock, J.
July 30-53	Filed Answer of Wurtembergische und Badische Vereinigte, etc.
July 30-53	Filed stip. for claimant's costs, $250., Indem. Ins. Co. of N. Amer.
Aug. 3-53	Filed Order permitting Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, Claimants, to file claim nunc pro tunc 9/30/52 at 10 o'clock A.M. Dimock, J.
Aug. 5-53	Filed stip. for costs ($250. Indem. Ins. Co. of N.A.)
Aug. 5-53	Filed answer of Maria Angelina Verbeeck, et al.
Dec. 30-53	Filed notice of change of firm name.
Feb. 2-54	Filed letter dated 1/20/54 from Jakob E. Gelting re withdrawal of claim of Hafnia Ham Co. Inc., and A/S Dansk Skinkekogeri, Copenhagen.
July 30-54	Filed interrogs.
Aug. 18-54	Filed notice of taking deposition of Mr. and Mrs. Thomas D. Leeson.
Sept. 2-54	Filed interrogs. propounded to petitioner by cargo claimants, etc.
Sept. 23-54	Filed answers to interrogatories (American Smelting & Refining Co., et al.)
Oct. 1-54	Filed exceptions to answers to interrogatories.
Dec. 30-54	Filed consent and order substituting Thomas H. Walker as proctor for United Fruit in place of Eugene F. Russell, Jr. Clerk.

Docket Entries

DATE	
Jan. 3-55	Filed notice of motion re: to permit Black Diamond S.S. Corp. to file its claim. Ret. 1/11/55.
Dec. 23-54	Filed exceptions and objections of petitioner Skibs A/S Jolund to answers of claimants to interrogs. Ret. 1/11/55.
Jan. 11-55	Memo endorsed on motion papers filed 1/3/55. Motion granted. Palmieri, J.
Jan. 18-55	Filed notice of pre-trial hearing. Memo end. 1/17/55. Place this case at the pre-trial calendar for a conference before me on 1/31/55. Knox, Ch. J.
Jan. 19-55	Filed order permitting claim of Black Diamond SS Corp to be filed nunc pro tunc as of March 26, 1953 within 20 days after signing of this order. Palmieri, J.
Jan. 25-55	Memo. endorsed on notice of motion filed 12/23/54. "Motion disposed of as indicated upon argument. Submit order." Bicks, J.
Jan. 26-55	Filed petitioner's interrogatories, answers and exceptions.
Jan. 28-55	Filed Notice of Claim of Black Diamond S.S. Corp.
Jan. 31-55	On call of pre-trial before, Knox, Ch. J. Hearing adjd. to 2/14/55
Feb. 24-55	Filed consent & order sustaining exceptions of petition to answers of American Smelting & Refining Co., et al. claimants, to petitioner's interrogs; order that claimants Amer. Smelting & Ref. Co. file answers to petitioner's interrogs as indicated, etc. Bicks, J.
Feb. 14-55	On call of pre-trial before, Knox, Ch. J. Hearing adjd to 3/17/55

Docket Entries

DATE	
Mar. 11-55	Filed supplemental answers to certain interrogs. (American Smelting & Refining Co. and other claimants, etc.)
Mar. 17-55	On call of pre-trial before Knox, Ch. J. Marked off pre-trial calendar.
Apr. 22-55	Filed affidavit of adjournment.
Aug. 29-55	Filed notice of non-readiness for trial
Aug. 29-55	Filed notice of non-readiness for trial
Aug. 30-55	Filed notice of non-readiness for trial
Aug. 31-55	Filed notice of readiness for trial
Sep. 1-55	Filed notice of non-readiness for trial
Dec. 29-55	Filed notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Also in A 178-342, A 178-370 and A 178-380)
Dec. 29-55	Filed affidavit and order revoking calendar dispositions etc. Weinfeld, J. (Also in A 178-342, A 178-370 & A 178-380)
Dec. 29-55	Filed affidavit of Daniel L. Stonebridge. (Also in A 178-342, A 178-370 and A 178-380)
Jan. 13-56	Filed Notice of Readiness for Trial.
Feb. 7-56	Filed Notice of change of firm name to Pyne, Brush, Smith & Michelsen from Pyne Lynch & Smith.
Feb. 6-56	Before Dimock, J. Trial begun. (Consolidated for trial with A178-342, 178-370 & A178-380).
Feb. 7-56	Trial continued.
Feb. 8-56	" " . Libelant and Passenger claimant rest.
Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th, 27th.	Trial continued.
Feb. 28-56	Trial concluded. Decision reserved.

Docket Entries

DATE	
Mar. 22-56	Filed Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Filed in A178-342).
May 16-56	Filed Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Also in A178-370, A178-342 & A178-380).
May 25-56	Filed notice of motion re: to strike and delete as indicated. Ret. 5/29/56. (Also in A178-370, A178-342 and A178-380)
May 29-56	Memo end. on motion papers filed 5/25/56. This motion is respectfully referred to Judge Dimock at the request of counsel. Palmieri, J.
July 18-56	Filed amended memorandum (Opinion #22,813) Dimock, J. (Also in A 178-370, A 178-342 and A 178-380)
July 23-56	Filed second amended memorandum (Opinion #22,829) Dimock, J. (Also in A 178-370, A 178-342 and A 178-380)
July 27-56	Filed proposed findings of fact and conclusions of law with memo. endorsed "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed petitioner's amended proposed findings and conclusions with memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed proposed findings of fact and conclusions of law. Memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.
July 27-56	Filed proposed findings of fact and conclusions of law. Memo. endorsed. "Disposed of as indicated on the margins" Dimock, J.

Docket Entries

DATE	
Oct. 4-56	Filed consent order for Findings of Fact and Conclusions of Law. Dimock, J. (Also in A.178-342. A.178-370. A.178-380)
Nov. 27-56	Filed ad interim stip. ($218,563. Assuranceforeningen Gard)
Nov. 27-56	Filed taxed bill of costs $2602.25. Clerk.
Nov. 28-56	Filed final decree of exoneration, petitioner to recover costs as taxed in sum of $2,602.25 from claimants listed in schedule attached. Dimock, J.
Dec. 14-56	Filed notice of appeal. Mailed copy to attorney 12-14-56.
Dec. 14-56	Filed assignments of error.
Dec. 14-56	Filed Bond underaking costs on appeal ($250. Ind. Ins. Co. of N.A.)
Dec. 19-56	Filed Notice of Appeal.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

(1501)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The petition of Skibs A/S Jolund, as owner of the motor ship "Black Gull", in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952, respectfully alleges on information and belief:

First: Skibs A/S Jolund petitioner now is and at all times herein mentioned was a Norwegian limited company or corporation with an office and place of business in Oslo, Norway, and is and at all times herein mentioned was the owner of the motor ship "Black Gull" hereinafter mentioned.

Second: The motor ship "Black Gull" is and at the time of the filing of this petition and the stipulation for costs herein, and the ad interim stipulation for value of the motor ship "Black Gull" herein will be within the jurisdiction of the United States and of this Honorable Court.

Third: The petitioner herein used due diligence to make the said motor ship "Black Gull" seaworthy, and the said vessel at all times herein mentioned was strong, staunch, tight and seaworthy, and in all respects fully and properly manned and equipped.

Fourth: The said motor ship "Black Gull" is and at all times herein mentioned was registered and operated

under the Norwegian flag as a cargo vessel of 4,929.33 tons gross register and 2,846 16 tons net register.

(1502)

Fifth: Prior to and at the commencement of the voyage hereafter described the petitioner used due diligence to make the said vessel seaworthy, and until the accident hereinafter mentioned she was tight, staunch, strong, fully manned, equipped and supplied, and in all respects seaworthy and fit for the service in which she was engaged and for the cargo which was ladened aboard her.

Sixth: On July 18, 1952 the motor vessel "Black Gull" was proceeding on a voyage from Rotterdam to New York. On the evening of that day and while the vessel was approximately sixty-five miles off Montauk Point a fire of undetermined origin was discovered in part of the deck cargo on board the "Black Gull". Prompt and efficient measures were immediately taken by the officers and crew of the vessel to extinguish the fire, and an SOS call was sent out. Despite the measures taken to extinguish the fire it spread rapidly so that it was finally necessary for those on board the "Black Gull" to abandon ship, and as a result of the fire the vessel became a constructive total loss with her equipment and cargo. The amount of damage to and loss of property, and of injuries and deaths which may have occurred as a result of such fire are at present not calculable.

Seventh: The losses, damages and destruction sustained by the "Black Gull", her crew and cargo, and by any and all other persons and property as may have resulted from the fire on the "Black Gull" were not caused

or contributed to by any fault, negligence or want of care on the part of the "Black Gull" or those in charge of her, the petitioner herein, or any one for whom the petitioner may be responsible, but resulted from a cause that could not (1503) have been avoided by such persons in the exercise of due care.

Eighth: The loss of cargo aboard the "Black Gull" as a result of said fire was occasioned and incurred without the design or neglect of the petitioner, and any and all damage or loss resulting therefrom occurred without any privity, knowledge or fault of the petitioner, or any one for whom petitioner was or is responsible, and without any fault, neglect or want of care on the part of the motor ship "Black Gull", or of any agent, servant, or employee of petitioner.

Ninth: Petitioner claims exoneration from liability for any and all loss or damage occasioned or incurred by reason of the matters aforesaid, and for any and all claims alleged or asserted against it, and petitioner alleges that it has a valid defense in law and upon the merits to any such claims.

Tenth: Petitioner in the event liability is decreed against it, or against the motor ship "Black Gull" claims the benefits of Sections 4283 et seq. of the Revised Statutes of the United States and the various Acts of Congress amendatory thereof and supplemental thereto, and to that end petitioner is ready and willing and hereby offers and agrees to give a stipulation with sufficient surety for the payment into court of the amount or value of the interest of the petitioner in said "Black Gull" whenever this Court shall order pursuant to the aforesaid statutes, general rules in admiralty and the rules of this Court.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

Eleventh: As appears from the annexed affidavits of Frank S. Martin, verified the 4th day of August, (1504) 1952, and of William M. Finkenauer, verified the 4th day of August, 1952 the said vessel as a result of the fire was a constructive total loss and in her damaged condition at the termination of her voyage had a value of not to exceed $140,000, and the pending freight prepaid and due for the entire voyage was $78,563. For purposes of bonding and security petitioner offers and files herein a stipulation for value in an amount which includes the value of the vessel in damaged condition as well as the entire freight aforesaid of $78,563.

Twelfth: As a result of the matters aforesaid various claims have been or may be made, and suits may be brought against the petitioner and against the motor ship "Black Gull". The amount of such claims can not at present be calculated, but the petitioner believes that they will be greatly in excess of the value remaining in the motor ship "Black Gull" and her pending freight.

Thirteenth: There are no demands or unsatisfied liens or claims against the said motor ship "Black Gull" of which your petitioner has any knowledge or notice, and the only suit pending against the said vessel or petitioner by reason of the fire is one in the United States District Court for the Southern District of New York for $10,000 filed by Stein, Hall & Co. Inc., for loss of a cargo of German burlap. The proctors or attorneys for the said claimant Stein, Hall & Co., Inc. are Bigham, Englar, Jones & Houston of 99 John Street, New York City. There were no claims pending against the said vessel at and prior to the time of the fire and damages or alleged damages which occurred on July 18, 1952 as hereinbefore described.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

Fourteenth: All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

(1505)

WHEREFORE, your petitioner prays:

That this court will cause due appraisement to be made of the amount or value of petitioner's interest in the said motor ship "Black Gull" and pending freight at the time of the aforesaid fire.

That this court make an order directing the petitioner to file a stipulation with surety to be approved by the court for payment in court of the amount of petitioner's interest whenever the court shall so order.

That this court make an order directing the issuance of a monition to all persons claiming damages for any and all loss, damage or injury caused by or resulting from the occurrences aforesaid, citing them to appear before the court in said order, and make due proof of their respective claims, and also to answer the allegations of this petition according to law and the practice of this court on or before a certain time to be fixed by said order.

That this court make an order directing that on the giving of such stipulation as may be determined to be proper, or of an ad interim stipulation, an injunction shall issue restraining the prosecution of any suits or proceedings already begun to recover damages arising out of occurrences hereinabove described, and the commencement and prosecution of any suit, action or legal proceeding of any nature or description whatsoever, except in the present proceeding and against the petitioner in respect to any claim or claims arising therefrom.

Petition of Skibs A/S Jolund, as Owner of the Motor Ship "Black Gull", for Exoneration and/or Limitation of Liability

That this court in this proceeding will adjudge that the petitioner is not liable to any extent for any loss, damage or injury, nor for any claim whatsoever in any way arising out of or in consequence of the occurrences herein- (1506) above described, or if the petitioner shall be adjudged liable that then its liability be limited to the amount or value of petitioner's interest in the motor ship "Black Gull" and pending freight at the termination of the voyage on which she was engaged at the time of the occurrence aforesaid, and that the moneys paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before the commissioner hereinbefore named saving to all parties any priorities to which they may be legally entitled, and that a decree may be entered discharging the petitioner from all further liability.

That the petitioner may have such other or further relief as the justice of the cause may require.

PYNE, LYNCH & SMITH
Proctors for Petitioner
116 John Street
New York 38, N. Y.

(Verified August 4, 1952.)

Order Amending Petition

(1522)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition of

SKIBS A/S JOLUND

as owner of the motor ship "Black Gull", in a cause of exoneration from and limitation of liability for damages arising in consequence of a fire on said vessel on and after July 18, 1952.

Upon the annexed affidavit of Anthony V. Lynch, Jr., sworn to August 20, 1952, and on the petition filed herein August 7, 1952, and the order of this court of the same day directing, among other matters, the issuance and publication of a monition;

Now, on motion of Pyne, Lynch & Smith, proctors for the petitioner, it is

ORDERED, that paragraphs Twelfth and Thirteenth of the petition be and they hereby are amended so as to read as follows:

"Twelfth: As a result of the fire and matters aforesaid numerous claims may be made, and suits brought against the said motor ship 'Black Gull' and the petitioner. One such suit in admiralty has already been brought, as hereinafter stated. The number of such claims or suits, and the amounts involved or the damages which may be alleged there-

in, are at present unknown and can not be estimated, but petitioner believes that they will greatly exceed the value of the motor ship 'Black Gull' and her pending freight. Such claims and possible suits thereon, to the best of petitioner's knowledge and belief, are as follows:

A suit in admiralty has been brought in this court on the libel of Stein, Hall & Co., Inc., of 285 Madison Avenue, New York City, against the motor ship 'Black Gull', and against the petitioner and others, to recover damages alleged in the libel in the sum of $10,000, said to have been (1523) sustained to a cargo of German burlap. Bigham, Englar, Jones & Houston, Esqs., of 99 John Street, New York 38, N. Y., are proctors for the libellant in the said suit. Owners, shippers, or consignees of other cargo on board said vessel and damaged or lost as a result of the fire and matters aforesaid, may also have and present claims, or bring suits; but the names and addresses of such other possible cargo claimants, and whether or not they are represented by attorneys, or the amount of their alleged damages, the petitioner does not now know, save and except that said Bigham, Englar, Jones & Houston, Esqs., have stated that they represent underwriters on cargo other than that involved in the libel filed by them on behalf of Stein, Hall & Co., Inc., and that they may make claim or bring suit on behalf of the owners or underwriters of such other damaged or lost cargo.

Merritt-Chapman & Scott Corporation, of 17 Battery Place, New York City, was engaged on July 19th, 1952 under a 'No Cure—No Pay' contract to send assistance to the said motor ship 'Black Gull', then on fire at sea, and to endeavor to save

the said vessel, cargo and freight, the amount of compensation for such services to be left to later determination; and pursuant to said agreement said Merritt-Chapman & Scott Corporation did render such assistance including towage of the remains of the vessel and cargo to the Port of New York. In so far as your petitioner is informed, no attorneys represent said salvor.

Petitioner is informed and believes that four members of the crew of said motor ship 'Black Gull' were missing as a result of the fire and matters aforesaid, and that after the arrival of the remains of the vessel at the Port of New York four bodies, so charred or burned as to be unidentifiable, were found on board the wreck, and are believed to be the bodies of the four missing members of the crew.

The names of the said four missing and presumed deceased members of the crew, and the names and addresses of their next-of-kin, to the best of petitioner's knowledge, are as follows:

Egil Torgersen, repairman, whose next-of-kin is Ingfrid Torgersen, of Ingersgat 29, Fredrikstad, Norway; Ole Andersen, motorman, whose next-of-kin is Bjoerg Andersen, of Aalestranden, Fredrikstad, Norway; Rold Ystenes, motorman, whose next-of-kin is Lilli Hansen, of Wesselsgate 29, Kristiansund N, Norway; and Josef Verbeeck, mess boy, whose (1524) next-of-kin is Maria Verbeeck, of Heuvelstratt 57, Boechout, near Antwerp, Belgium. In so far as petitioner is informed, no claims have been presented on behalf of any of the aforesaid deceased or their estates or next-of-kin, nor are any of them represented by an attorney.

There were nine passengers on board the said

motor ship 'Black Gull' at the time of the fire and matters aforesaid, all of whom have made claim for loss of personal effects, and four of whom have stated they sustained injury and these four may make claim for such injuries. To the best of petitioner's knowledge the names and addresses of said passengers, and the amount of the claims presented for loss of personal effects, and those who have stated that they sustained injury, and who therefore may make claim for amounts for injury, are as follows: Jacobus de Nobel, of Schalkwijkerstraat 45, Haarlem, Holland, who has made claim of $549 for loss of personal effects, and has stated he sustained injuries; Pieter Spaanderman, of Van Dalenlaan 47, Santpoort, Holland, who has made claim of $747 for loss of personal effects, and has stated he sustained injuries; Thomas D. Leeson and Jeanne Leeson, care of Major Francis R. MacDonald, 2107 Woodbourne Avenue, Louisville 5, Kentucky, who have made claim of $1750 for loss of personal effects, and have stated they sustained injuries; Jurg Furger, care of Mr. Louis R. Sartorius, International B. F. Goodrich Co., 230 Park Avenue, New York, N. Y., who has made claim of $527.50 for loss of personal effects; Jan Peter Mueller, care of Tobacco Merchants Corporation, 20 Exchange Place, New York 5, N. Y., who has made claim of $792 for loss of personal effects; Jan A. Dreisprong and Janna Dreisprong, and Wilhelmina Dreisprong, care of M. Van Hof, 122 Vernon Avenue, Newport, R. I., who have made claim of $2929.50 for loss of personal effects. None of the aforesaid passengers to petitioner's knowledge are represented by attorneys, save and except that Abberley, Kooiman & Amon, Esqs., attorneys at

law, of 55 Liberty Street, New York 5, N. Y. have stated that they represent Jan A. Dreisprong, Janna Dreisprong, and Wilhelmina Dreisprong.

1525)

Petitioner is informed that the third mate of the vessel, Nils Valen, whose home address is Haugesund, Norway, suffered burns, and that he was taken on board the steamship 'Gripsholm' from the scene of the fire to Europe; but in so far as petitioner is informed said Nils Valen has not up to the present time made any claim, nor is he represented by an attorney.

Petitioner is informed that Olav Karlsen, whose home address is unknown to petitioner, a member of the crew of the 'Black Gull' in the capacity of ordinary seaman, sustained injuries which resulted in hospitalization at the U. S. Marine Hospital, Stapleton, Staten Island, where he is now believed to be a patient. Herman Cooper, Esq., an attorney, of 225 Broadway, New York, N. Y., has written the charterer of the vessel, Black Diamond Steamship Corporation, stating that he represents said Olav Karlsen, who has a claim for personal injuries and maintenance, but no amount has thus far been stated for said claims.

Petitioner is informed that several other members of the crew of the said vessel may have sustained injuries which petitioner believes to have been minor, but which members of the crew, or the nature and extent of their injuries, petitioner does not now know, nor have any of them made any claim, nor has any attorney appeared on behalf of any of them, save and except as aforesaid; and save and except also that Jacob Rassner, Esq., an

attorney, of 220 Broadway, New York 38, N. Y., under date of July 24th, 1952 wrote Black Diamond Steamship Corporation stating he had been 'retained as attorney for the crew members of the S/S "Black Gull", without naming any particular member of the crew, and without making claim or demand on behalf of any or either of them or stating the nature or amount of any claim existing.

Thirteenth: There are no demands or unsatisfied liens or claims against said motor ship 'Black Gull' of which your petitioner has any knowledge or notice, save and except the claim of Merritt-Chapman & Scott Corporation for salvage, and the other claims or possible claims referred to in foregoing paragraph Twelfth hereof. There were no claims pending against the said vessel at and prior to the time of the fire and damages or alleged damages which occurred on or about July 18th, 1952, as hereinbefore described."

and it is further

Ordered, that the order of this court of August 7, 1952 directing the issuance of a monition and the filing of claims with the Clerk of this Court, and the monition issued thereunder be and the same hereby are amended so as to order and direct that all persons claiming damages for (1526) any and all losses or damages arising out of or consequent upon the fire which occurred on the motor ship "Black Gull" on July 18, 1952, and all persons having any claim against the said motor ship and pending freight appear before this court and file proof of their respective claims under oath with the clerk of this court on or before September 30, 1952 at 10 o'clock in the forenoon of that day; and be it further

Order Amending Petition

ORDERED, that except as hereinbefore amended the petition and all orders heretofore made herein and the monition be and the same remain in full force and effect as herein amended.

Dated New York, N. Y., August 21, 1952.

Sd. DAVID V. EDELSTEIN
United States District Judge

Affidavit of Anthony V. Lynch, Jr.

(1527)

[SAME TITLE]

State of New York,
County of New York—ss.:

ANTHONY V. LYNCH, JR., being duly sworn, deposes and says:

I am a member of the firm of Pyne, Lynch & Smith, proctors for the petitioner in the above entitled proceedings.

The petition herein for exoneration from and limitation of liability was verified by deponent, as proctor for the petitioner; and filed in this court on August 7th, 1952, and under the same date this court made an order directing, among other things, the issuance of a monition requiring that proof of all claims be filed with the Clerk of this court on or before September 16th, 1952 at 10 a. m., and that public notice of the monition be given by publication

in the New York Law Journal once a week for four consecutive weeks.

Such publication was commenced on Monday, August 11th, 1952, and the second publication of the notice (1528) has been made on Monday, August 18th, 1952. No claims or appearances, and no answers to the petition have as yet been filed by or on behalf of any party. Because of information acquired by deponent subsequent to the verification and filing of the petition, deponent believes it necessary and desirable to amend two paragraphs of the petition which refer to the possible claims or suits, and also to amend the order for monition and its publication so as to extend the time for filing of claims and for giving notice to claimants or possible claimants, and again commence publication for the four week period.

Since the aforesaid verification and filing of the petition, deponent has learned that there then was a claim pending or lien against the said motor ship "Black Gull" to wit, a claim and lien of Merritt-Chapman & Scott Corporation for salvage services rendered to the "Black Gull" and her cargo and freight in connection with the fire in question. Also further details are now known concerning claims or possible claims of passengers and members of the crew for loss of personal effects or personal injury, of owners, shippers or consignees of cargo, and of possible claims of next-of-kin of for deceased members of the crew. All these matters are covered as fully as is now reasonably proper and necessary in a proposed amendment of paragraphs Twelfth and Thirteenth of the petition the form and content of which are set forth in Schedule A hereto attached. Deponent desires and prays that the proposed attached form and content of paragraph Twelfth and Thirteenth of the petition be substituted in place and stead of paragraphs of the original petition.

Affidavit of Anthony V. Lynch, Jr.

(1529)

The order of this court of August 7th, 1952 directing the issuance of the monition provided for the four weeks publication once a week required under Supreme Court Admiralty Rule 51, and as previously stated for the filing of claims by September 16th, 1952 at 10 a. m. To afford opportunity for the publication and mailing of the notice required by the same rule to be made not later than the second day of publication, it is now also respectfully requested that the said order and the monition issued thereunder be amended so as to require the filing of claims on or before September 30th, 1952 at 10:00 o'clock in the forenoon of that day.

Wherefore deponent prays that an order be made herein that the petition order for the issuance of the monition and publication of notice thereof, and the monition, be amended in accordance with the foregoing.

Anthony V. Lynch, Jr.

(Sworn to August 20, 1952.)

SCHEDULE A, ANNEXED TO AFFIDAVIT OF ANTHONY V. LYNCH, JR.

(1530)

Proposed Form and Content of Paragraphs Twelfth and Thirteenth of the Petition as Amended:

[Same as set out in foregoing order]

Claim of American Smelting & Refining Co.

(2152)

[SAME TITLE]

CLAIM OF AMERICAN SMELTING & REFINING CO.
FOR $26,500.00

The above named claimant hereby appears in this proceeding and makes claim against petitioner, Skibs A/S Jolund, and against the M. S. "Black Gull", and her proceeds, as follows:

First: At all the times hereinafter mentioned claimant was, and now is, an individual, co-partnership, corporation, or other legal entity, as described on Schedule "A" hereto annexed, with, in the case of an individual, a place of residence, and in the cases of co-partnerships and corporations, a place of business, at the address set forth on said schedule.

Second: At all said times petitioner, Skibs A/S Jolund, was, and now is, a Norwegian limited company or corporation, and was at all said times the owner of the M. S. "Black Gull".

Third: At all said times the M. S. "Black Gull" was a general ship engaged in the common carriage of merchandise on the high seas for hire, between the ports of Bremen, Hamburg, Rotterdam and Antwerp, and the ports of Boston, New York and Philadelphia.

Fourth: During the months of June and July, 1952, the shippers whose names are set out on Schedule "A" hereto annexed, delivered to petitioner and other car-

riers as common carriers at the ports of shipment set out on Schedule "A" hereto annexed, the shipments of merchandise described on said schedule, in good order and condition, for transportation by petitioner and said other carriers on the said motorship, from the said ports of shipment to the ports of destination set out on said schedule, and delivery there, in like good order and condition as when shipped, to the consignees named on said schedule, in consideration of certain agreed freights, and in accordance with the valid terms of certain bills of lading signed and delivered to said (2153) shippers at said ports of shipment by duly authorized agents of petitioner and said other carriers and of the M. S. "Black Gull".

Fifth: Thereafter said shipments, still in good order and condition, were shipped and placed on board the M. S. "Black Gull" by petitioner and said other carriers; and thereafter the said vessel having the said shipments on board, sailed from the ports of shipment named in Schedule "A" annexed hereto, and thereafter arrived at the port of New York in tow. The shipments described on Schedule "A" either have not been delivered at all to the persons entitled thereto, or have been delivered to them short, slack and seriously injured and damaged; and such parts of said shipments as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading. In addition, the persons entitled to delivery were obliged to incur, and did incur, heavy expense to obtain delivery of such portions of said shipments as were delivered.

Sixth: Prior to the arrival of the M. S. "Black Gull" at New York, and prior to filing of this claim, claimant became for value the owner and holder of said bills of

lading, and the owner of said shipments and entitled to delivery thereof, in accordance with the terms of the contracts of carriage. Claimant files this claim on its own behalf, and on behalf of all others who may ultimately prove to be interested in said shipments, as their respective interests may ultimately appear.

Seventh: Claimant and its predecessors in title and in interest, and those on whose behalf this claim is filed, have duly performed all the terms and condition of the contracts of carriage on their respective parts to be performed.

Eighth: By reason of the premises, claimant and those on whose behalf this claim is filed have suffered and sustained damages in the sum set out on page "1" of this claim and on Schedule "A" hereto annexed, as nearly as the same can now be estimated, no part of which sum has been paid, although duly demanded.

Ninth: This claim accrued on July 18, 1952.

Tenth: All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, claimant prays that this claim be approved and allowed by the Court, with interest and costs, and that claimant may have such other and further relief as in law and justice claimant may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimant.

(Verified January 27, 1953.)

SCHEDULE "A", ANNEXED TO CLAIM OF AMERICAN SMELTING & REFINING COMPANY

(2154)

CLAIMANT: American Smelting & Refining Co.

STATUS: Corporation organized according to law.

PLACE OF BUSINESS: 120 Broadway, New York, N. Y.

SHIPPER: Mining Equipment Corp.

PORT OF SHIPMENT: Rotterdam

BILL OF LADING NO.: 30

DESCRIPTION OF MERCHANDISE: 645 ingots of Tin-Alloy of which Tin is the component of chief value.

CONSIGNEE: Order of American Smelting & Refining Co., notify same.

PORT OF DESTINATION: New York

AMOUNT OF DAMAGES: $26,500.00.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

(2392)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The answer of American Smelting & Refining Company and of all of the other claimants whose names are set out on Schedule "A" hereto annexed to the petition of Skibs A/S Jolund as owner of the Motorship "Black Gull" as amended, in a cause of exoneration from and limitation of liability, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Claimants have heretofore filed their claims herein under oath.

Second: Claimants admit the allegations of the First Article of the Petition.

Third: Claimants admit the allegation of the Second Article of the Petition.

Fourth: Claimants deny the allegations of the Third Article of the Petition.

Fifth: Claimants admit that at the times mentioned in the Petition, the motorship "Black Gull" was registered and operated under the Norwegian flag as a cargo vessel and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Fourth Article of the Petition.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

Sixth: Claimants deny the allegations of the Fifth Article of the Petition.

Seventh: Claimants admit that on July 18, 1952, the motor vessel, the "Black Gull" was proceeding on a voyage from Rotterdam to New York. They further admit that said vessel, (2393) before the termination of said voyage, became a constructive total loss with her equipment and most of her cargo. They further admit that the amount of damage to and loss of property and of injuries and deaths which may have occurred in the course of the said voyage are not at present calculable. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Sixth Article of the Petition.

Eighth: Claimants deny the allegations of the Seventh Article of the Petition.

Ninth: Claimants deny the allegations of the Eighth Article of the Petition.

Tenth: Claimants deny that petitioner has valid defenses in law and of upon the merits to their claims, and deny the remaining allegations of the Ninth Article of the Petition.

Eleventh: The Tenth Article of the Petition constitutes merely a statement of purpose, and claimants are not required to answer it.

Twelfth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Eleventh Article of the Petition.

Answer of Claimants American Smelting & Refining Company, et al., to the Petition of Skibs A/S Jolund as Owner of the Motorship "Black Gull" as Amended

Thirteenth: Claimants admit the allegations of the first two paragraphs of the Twelfth Article of the Petition, as amended, and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Twelfth Article of the Petition, as amended.

Fourteenth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations (2394) of the Thirteenth Article of the Petition, as amended.

Fifteenth: Claimants admit that the premises alleged in the Petition are within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court and deny the remaining allegations of the Fourteenth Article of the Petition.

Wherefore Claimants pray that their claims heretofore filed herein be allowed, with interest and costs; that the Petition herein be denied and dismissed; and that they may have such other and further and different relief as in law and justice they may be entitled to receive.

Bigham, Englar, Jones & Houston
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified March 25, 1953.)

SCHEDULE "A", ANNEXED TO ANSWER OF AMERICAN SMELTING & REFINING COMPANY

(2396)

LIST OF CLAIMANTS IN ADDITION TO AMERICAN SMELTING & REFINING COMPANY ON WHOSE BEHALF THE FOREGOING ANSWER IS FILED

Atkinson Haserick & Co.

Anglo Fabrics Company, Inc.

Frederick E. Aubel, Jr. & Frederick E. Aubel, III, copartners doing business under the firm name of F. & E. Aubel.

Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons.

Atalanta Trading Corporation.

Archer-Daniels-Midland Company

Ameurope Metals, Inc.

Ernest Adler Co., Inc.

American Overocean Corporation.

Associated Metals & Minerals Corporation.

Stanley Wallach doing business as The Atlantic Works.

Beatty & Hyde, Inc.

Bracht & Co., Inc.

The Baker Castor Oil Company

Browning Chemical Corporation

Bell Telephone Manufacturing Company, S. A.

Budde & Westerman

Schedule "A", Annexed to Answer of American Smelting & Refining Company

D. Benedetto, Inc.

Baloise Marine Insurance Company, Ltd.

Cordingley Company

Capital Airlines

Columbia Export Co., Inc.

Colonial Mirror & Glass Corp.

Frederick H. Cone & Co., Inc.

Cosa Corporation

Ezl. Dunwoody Co.

Dickerson's Overseas Company, a Division of the Dickerson Company, Inc.

(2397)

A. de Swaan, Inc.

Delmey Trading Corporation

The Enterprise Manufacturing Company of Pennsylvania

A. L. Erlanger Co., Inc.

J. Eisenberg, Inc.

European Chemical Co., Inc.

Wm. S. Febiger Co. & Intercontinental Wool Co.

Robert S. Fish & Co., Inc.

Federal Liquors, Ltd.

Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co.

Frieman Knitwear Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Federated Department Stores, Inc. The F. & R. Lazarus & Company, Div.

Fein & Co., Inc.

B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company.

Frank A. G.

Andrew Fisher Cycle Co., Inc.

Fallani & Cohn Co., Inc.

Garden Supply Sales Corporation.

Gotaas Export Corporation

Robert A. Hurley & Co., Inc.

Richard W. Homer doing business under the firm name and style of Richard W. Homer Company.

A. H. Helmig & Co., Inc.

Frank B. Healis & Co., Inc.

Hohenberg Co., Inc.

Industrial Sales Corporation

Innis Speiden & Co., Inc.

Imperial International Corporation

(2?98)

Imex S. A.

Import-Export Industries, Inc.

International Expediters, Inc.

Interstate Casing Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

J. M. Trading Corporation

Jacky Maeder & Co.

Robt. Jowitt & Sons, Ltd.

Kreglinger, Inc.

H. M. Koeningswerther, Inc.

Albert Kremper

Fred H. Lenway & Co., Inc.

Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Hebert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company.

Lador S. A.

Maryland Trading Corporation

Munro Kincaid Mottla, Inc.

Mandel Brothers, Inc.

Marble Supply Corporation of America

Monsanto Chemical Co.

Marum Knitting Mills, Inc.

Metasco, Inc.

Mitropa Corporation

Miller Products Export Corporation.

Merino Wool Corporation

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Modern Exportation

Harry Liebowitz doing business as Modern Glass & Wire Supply Company.

(2399)

Mercaderias Peruanas S. A.

Meyerhans & Cie. S. A.

Etablissements Francois Masurel Freres

Norge Boats, Inc.

John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company.

North & Central American Hide Corporation

New Amsterdam Import Co., Inc.

Richard M. Ott & Sons, Inc.

Otis McAllister & Co.

O'Neill Brothers, Inc.

Parker Machine Co., Inc.

Paper Corporation of United States

Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust

Pojhola Insurance Company

William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co.

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Joseph Rosenthal's Sons Inc.

S. Rosenfelder & Son, Inc.

Reliance International Manufacturing Co.

Walter H. Rothschild & Co., Inc.

S. K. F. Industries, Inc.

Irving M. Sobin Co., Inc.

Jos. Sultan & Sons, Inc.

Paul A. Straub & Co., Inc.

E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company.

(2400)

Christopher Smiles & Co., Inc.

F. Schumacher & Co.

George Scherr & Co., Inc.

William Steck & Co., Inc.

Standard Sales Steel Co., Inc.

J. Shore & Co.

R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons

A. Samyn Permandt

Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)

Stein Hall & Co., Inc.

Schedule "A", Annexed to Answer of American Smelting & Refining Company

Switzerland General Insurance Company, Ltd.

William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co.

F. H. Taussig

The Travelers Fire Insurance Company

Touraine Flowers, Inc.

United Hat Fur Cutting Company

Bernhard Ullmann & Co., Inc.

Ullmann-Allied Overseas Associates Ltd.

Union des Fabriques Belges de Textiles Artificiels S. A.

Firma J. van Beelen e. v.

C. J. Van Houten & Zoon n. v.

Western Dairy Products, Inc.

S. H. Waldstein Co., Inc.

Wool Distributing Corporation

Georg Wertheimer

W. W. Windle Company

Rembert Wurlitzer

Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company and

David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons.

Claim of Maria A. Verbeeck, et al.

(2417)

[SAME TITLE]

Claim of MARIA A. VERBEECK, et al.
For $22,500.00

First: Maria Angelina Verbeeck, as surviving widow, and Maurice Verbeeck, Simone Verbeeck, and Leo Verbeeck, as surviving children, of Joseph Antony Verbeeck, deceased, appear and make claim against the above named petitioner in a cause of damage for death on the high seas by wrongful act.

Second: Claimants are subjects of the Kingdom of Belgium, residing at Boechout, Antwerp, Belgium. Claimant Maria Angelina Verbeeck is the surviving widow of Joseph Antony Verbeeck, deceased, and claimants Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck are surviving children of said decedent.

Third: Decedent Joseph A. Verbeeck left surviving him the claimants listed above. Excepting for said claimants, decedent left surviving him no wife, husband, parent, child or other dependent relative. Each of the above named claimants has sustained damages and injury and personal pain and suffering, and has been deprived of support and of the reasonable expectation of pecuniary benefit, by reason of the death of said decedent, and they have thereby been damaged in the total sum above stated, no part of which has been paid although duly demanded.

(2418)

Fourth: The Petitioner is a corporation duly organized, created and existing under and by virtue of the laws of the Kingdom of Norway, with an office and place of business at Oslo, Norway. Petitioner was at all times

herein mentioned the owner and operator of the M. S. "Black Gull", which, at all the times herein mentioned, was a general ship engaged in the common carriage of passengers and merchandise for hire, between the ports of Hamburg, Bremen, Antwerp and Rotterdam and the ports of New York, Boston and Philadelphia.

THE NATURE OF YOUR CLAIMANTS' CLAIM

Fifth: On or about the 1st day of July, 1952, petitioner engaged the above named decedent as a seaman, to wit, a mess boy, to serve in that capacity aboard the Norwegian Steamship "Black Gull" on a voyage from Antwerp, Belgium to New York, Boston and Philadelphia. Petitioner was obligated to furnish decedent with a safe place to work, and was further obligated to maintain the M. S. "Black Gull" in a safe condition. In breach of those obligations, petitioner, among others, caused or permitted the said steamship to be, or to become, an unsafe place to work, and failed to exercise due care to maintain such steamship in a safe condition. As a result thereof, and in consequence of the willful and gross negligence of petitioner, among others, a fire broke out on said steamship, on the high seas, on or about the 18th day of July, 1952, and as a result thereof decedent lost his life.

THE GROUNDS OF YOUR CLAIMANTS' CLAIM

Sixth: Said fire and the consequent death of decedent were not in any degree caused by any fault, neglect or want of care of decedent or of claimants, but were caused by the wrongful acts, neglect and default and by the willful and gross negligence of petitioner, its officers, agents and servants, among others.

(2419)

Seventh: At all times herein mentioned it was, and it now is, the law of the Kingdom of Norway, that an

action is maintainable against any corporation which by wrongful acts, neglect, or default, shall have caused the death of any person. By the said law of the Kingdom of Norway, such action may be brought by, and for the benefit of, the spouse and children of the person whose death shall have been caused, and shall be brought by them. A copy of a translation of the pertinent provisions of said law, which is known as "An Act concerning the entry into force of the General Civil Penal Code", is annexed hereto, marked Exhibit "A", and made a part hereof. The said act was, at all the times mentioned in this claim, and still is, in force in the Kingdom of Norway, and extended and still extends in its operation to all deaths occurring on or caused by Norwegian vessels on the high seas.

At all the times mentioned in this claim, it was, and now is, the law of the United States of America, that "whenever a right of action is granted by the law of any foreign state, on account of death by wrongful act, negligence or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the Courts of the United States, without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding". (Title 46 U. S. C., Section 764)

Eighth: The M. S. "Black Gull" was a vessel of Norwegian registry.

THE ITEMS OF YOUR CLAIMANTS' CLAIM

Ninth: The items of your claimants' claim are as follows:

For loss of reasonable expectation of pecuniary benefit (2420) to Marie Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck, and Leo Verbeeck, the sum of $22,500.00. The date on which this claim accrued was July 18, 1952.

Tenth: By reason of the premises, claimants have sustained damages in the sum of $22,500.00 against which no credits exist, and no part of which has been paid, although duly demanded.

WHEREFORE, Claimants present this claim and pray that damages be allowed your claimants in the sum of $22,500.00, that payment thereof be decreed, and that such other and further orders may be made to protect the rights of claimants as to the Court may seem just and proper.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants.

(Verified July 13, 1953.)

EXHIBIT A, ANNEXED TO CLAIM OF MARIA A. VERBEECK, ET AL.

(2422)

Translation from Norwegian.

Certain provisions concerning damages included in the Norwegian Act of May 22, 1902, No. 11, known as the "Act concerning the Entry into Force of the General Civil Penal Code".

Section 19.

If any person has caused any injury to the body or limbs or to the health of another, or if he has infringed his personal liberty, and if the wrongdoer is liable in damages according to any other principles of law, he shall—besides indemnifying the injured party for the

injury which he has suffered—also compensate him for any impairment of his future earning capacity, to such extent as the Court may consider to be fair and reasonable having regard to the degree of negligence and any other circumstances involved.

If the act concerned has been committed wilfully or by gross negligence, the Court may also order the wrongdoer to pay to the injured party such amount of money as may be considered fair and reasonable, by way of compensation for personal pain and suffering or for any other injury of a non-economic nature which has been caused by the act concerned.

The provisions of the first and second paragraphs of this section shall also apply to any person who has committed an offense according to sections 168, 169, 191-196, 201, 210, or 217-221 of the Penal Code.

Section 20.

In the event that the act concerned has caused the death of another person, the person who is liable in damages shall pay to the person responsible for the burial the costs incurred thereby.

Section 21.

If, in consequence of the death which has been caused, any person is deprived of his supporter, the person who is liable (2423) in damages shall be ordered to indemnify the dependent for the loss which he is considered to suffer as a result thereof, to such extent as is held by the Court to be just and reasonable having regard to the degree of negligence and any other circumstances involved.

If the death has been caused wilfully or by gross negligence, the Court may also award the spouse, children or parents of the person killed such compensation as provided in the second paragraph of section 19.

Exhibit A. Annexed to Claim of Maria A. Verbeeck, et al.

Section 28.

The right to recover damages shall lapse after a period of 3 years; provided, however, that the period—if the claim has resulted from a punishable offence—shall be 10 years from the date when the person wronged became aware of the injury and of the identity of the person responsible for it.

If the claim for damages has resulted from a punishable offence, the claim is in any event recoverable in connection with any criminal proceedings in which the wrongdoer is sentenced. If no decision is made by the Court with regard to a claim for damages submitted during the criminal proceedings, the provisions of the second paragraph of section 12 of the Statute of Limitations of July 27, 1896, shall apply.

The right of seizure according to section 36 of the Penal Code is not subject to prescription.

Correct translation certified.
Oslo, January 5, 1953.

(signed) J. Wulfsberg SEAL
J. Wulfsberg
(Authorized translator)

Answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the Petition of Skibs A/S Jolund as Owner of the M. S. "Black Gull", as Amended

(2440)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the petition of Skibs A/S Jolund as owner of the M. S. "Black Gull", as amended, in a cause of exoneration from and limitation of liability, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Claimants have heretofore filed their claims herein under oath.

Second: Claimants admit the allegations of the First Article of the Petition.

Third: Claimants admit the allegation of the Second Article of the Petition.

Fourth: Claimants deny the allegations of the Third Article of the Petition.

Fifth: Claimants admit that at the time mentioned in the Petition, the motorship "Black Gull" was registered and operated under the Norwegian flag as a cargo vessel and deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Fourth Article of the Petition.

Sixth: Claimants deny the allegations of the Fifth Article of the Petition.

Seventh: Claimants admit that on July 18, 1952, the motorship "Black Gull" was proceeding on a voyage from Rotterdam to New York. They further admit that on

Answer of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck to the Petition of Skibs A/S Jolund as Owner of the M. S. "Black Gull", as Amended

that day while the vessel was at sea, a fire was discovered on board said vessel. (2441) They further admit that as a result thereof the vessel became a constructive total loss with her equipment and most of her cargo before the termination of the voyage and that the amount of damage to, and loss of property and of injuries and deaths which may have occurred in the course of the said voyage are not at present calculable. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Sixth Article of the Petition.

Eighth: Claimants deny the allegations of the Seventh Article of the Petition.

Ninth: Claimants deny the allegations of the Eighth Article of the Petition.

Tenth: Claimants deny that petitioner has valid defenses in law and/or upon the merits to their claims, and deny the remaining allegations of the Ninth Article of the Petition.

Eleventh: Claimants deny that under the law of the United States petitioner is entitled to the benefits of the statutes mentioned in the Tenth Article of the Petition with respect to their claims and allege that under the laws of the United States petitioner is not entitled to limit its liability with respect to claimants' claims.

Twelfth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Eleventh Article of the Petition.

Thirteenth: Claimants admit the allegations of the first two paragraphs of the Twelfth Article of the Peti-

tion as amended. They further admit that Joseph Verbeeck, messboy, a member of the crew of the M. S. "Black Gull" died in the fire on board her, and that claimant Maria Verbeeck, is his widow (2442) and allege that she has now filed claim in this proceeding through her attorneys. They deny that they have any knowledge or information sufficient to form a belief as to the remaining allegations of the Twelfth Article of the Petition as amended.

Fourteenth: Claimants deny that they have any knowledge or information sufficient to form a belief as to the allegations of the Thirteenth Article of the Petition, as amended.

Fifteenth: Claimants admit that the premises alleged in the Petition are within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court and deny the remaining allegations of the Fourteenth Article of the Petition.

WHEREFORE Claimants pray that their claims heretofore filed herein be allowed, with interest and costs; that the Petition herein be denied and dismissed; and that they may have such other and further and different relief as in law and justice they may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 29, 1953.)

Docket Entries in American Smelting & Refining Company, et al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Ad. 178-342

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & Co., ANGLO FABRICS COMPANY, INC., FREDERICK E. AUBEL, JR. & FREDERICK E. AUBEL, III, co-partners doing business under the firm name of F. & E. AUBEL, OLAF RAVNDAL as treasurer of AMERICAN EXPRESS COMPANY, an unincorporated association of more than 7 persons, ATALANTA TRADING CORPORATION, ARCHER-DANIELS-MIDLAND COMPANY, AMEUROPE METALS, INC., ERNEST ADLER Co., INC., AMERICAN OVEROCEAN CORPORATION, ASSOCIATED METALS & MINERALS CORPORATION, STANLEY WALLACH doing business as THE ATLANTIC WORKS, BEATTY & HYDE, INC., BRACHT & Co., INC., THE BAKER CASTOR OIL COMPANY, BROWNING CHEMICAL CORPORATION, BELL TELEPHONE MANUFACTURING COMPANY, S. A., BUDDE & WESTERMAN, D. BENEDETTO, INC., BALOISE MARINE INSURANCE COMPANY, LTD., CORDINGLY COMPANY, CAPITAL AIRLINES, COLUMBIA EXPORT Co. INC., COLONIAL MIRROR & GLASS CORP., FREDERICK M. CONE & Co., INC., COSA CORPORATION, EZL. DUNWOODY Co., DICKERSON'S OVERSEAS COMPANY, a Division of the DICKERSON COMPANY, INC., A. de SWAAN, INC., DELMEY TRADING CORPORATION, THE ENTERPRISE MANUFACTURING COMPANY OF PENNSYLVANIA, A. L. ERLANGER Co., INC., J. EISENBERG, INC., EUROPEAN CHEMICAL Co., INC., WM. S. FEBIGER Co. & INTERCONTINENTAL WOOL Co., ROBERT S. FISH & Co., INC., FEDERAL LIQUORS, LTD., LEWIS C. FRANKLIN & LEWIS C. FRANKLIN, JR., co-partners doing business under the firm name and style of FRANKLIN & Co., FRIEMAN KNITWEAR CORPORATION, FEDERATED DEPARTMENT STORES, INC., THE F. & R. LAZARUS & COMPANY, DIV., FEIN & Co., INC., B. S. BERGENSEN & JORGEN KRAG, co-partners doing business under the firm name and style of FROSTY FOODS COMPANY, FRANK A. G., ANDREW FISHER CYCLE Co., INC., FALLANI

& Cohn Co., Inc., Garden Supply Sales Corporation, Gotaas Export Corporation, Robert A. Hurley & Co., Inc., Richard W. Homer doing business under the firm name and style of Richard W. Homer Company, A. H. Helmig & Co., Inc., Frank B. Healis & Co., Inc., Hohenberg Co., Inc., Industrial Sales Corporation, Innis Speiden & Co., Inc., Imperial International Corporation, Imex S. A., Import Export Industries, Inc., International Expediters, Inc., Interstate Casing Corporation, J. M. Trading Corporation, Jacky Maeder & Co., Robt. Jowitt & Sons, Ltd., Kreglinger, Inc., H. M. Koeningswerther, Inc., Albert Kremper, Fred H. Lenway & Co., Inc., Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel T. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company, Ladoe, S. A., Maryland Trading Corporation, Munro Kincaid Mottla, Inc., Mandel Brothers, Inc., Marble Supply Corporation of America, Monsanto Chemical Co., Marum Knitting Mills, Inc., Metasco, Inc., Mitropa Corporation, Miller Products Export Corporation, Merino Wool Corporation, Modern Exportation, Harry Liebowitz doing business as Modern Glass & Wire Supply Company, Mercaderias Peruanas S. A., Meyerhans & Cie. S. A., Etablissements Francois Masurel Freres, Norge Boats, Inc., John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company, North & Central American Hide Corporation, New Amsterdam Import Co., Inc., Richard M. Ott & Sons, Inc., Otis McAllister & Co., O'Neill Brothers, Inc., Parker Machine Co., Inc., Paper Corporation of United States, Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, A Massachusetts Voluntary Trust, Pothola Insurance Company, William A.

Docket Entries in American Smelting & Refining Company, et al.

LONGSHORE, MALCOLM R. LONGSHORE, HENRY G. REIFSNYDER, HENRY P. ORLEMANN, JR., and RUSSELL R. LONGSHORE co-partners doing business under the firm name and style of I. REIFSNYDER SON & CO., JOSEPH ROSENTHAL'S SONS, INC., S. ROSENFELDER & SON, INC., RELIANCE INTERNATIONAL MANUFACTURING CO., WALTER H. ROTHSCHILD & CO., INC., S. K. F. INDUSTRIES, INC., IRVING M. SOBIN CO., INC., JOS. SULTAN & SONS, INC., PAUL A. STRAUS & CO., INC., E. RICHARD SCHWABACH, JULIUS SCHURE, N. W. FEINGOLD, PAUL D. PERUTZ, GEORGE J. PERUTZ and FRED W. PERUTZ, co-partners doing business under the firm name and style of SCHWABACH & COMPANY, CHRISTOPHER SMILES & CO., INC., F. SCHUMACHER & CO., GEORGE SCHERR & CO., INC., WILLIAM STECK & CO., INC., STANDARD SALES STEEL CO., INC., J. SHORE & CO., R. K. STEPLING & MAUDE A. STERLING co-partners doing business under the firm name and style of D. L. STERLING & SONS, A. SAMYN PERMANDT, SOCIETE DES MINES ET FONDERIES DE ZINC DE LA VIELLE MONTAGNE (S. A.), STEIN, HALL & CO., INC., SWITZERLAND GENERAL INSURANCE COMPANY, LTD., WILLIAM T. NEWBOLD & JAMES M. REILLY co-partners doing business under the firm name and style of NATHAN TROTTER & CO., F. H. TAUSSIG, THE TRAVELERS FIRE INSURANCE COMPANY, TOURAINE FLOWERS, INC., UNITED HAT FUR CUTTING COMPANY, BERNHARD ULLMANN & CO., INC., ULLMANN-ALLIED OVERSEAS ASSOCIATES LTD., UNION des FABRIQUES BELGES de TEXTILES ARTIFICIELS S. A., FIRMA J. van BEELEN e. v., C. J. VAN HOUTEN & ZOON n. v., WESTERN DAIRY PRODUCTS, INC., S. H. WALDSTEIN CO., INC., WOOL DISTRIBUTING CORPORATION, GEORG WERTHEIMER, W. W. WINDLE COMPANY, REMBERT WURTLITZER, THEODORE WILLICH, ALBERT WILLICH & ANTON F. DOLCE, co-partners doing business under the firm name and style of WILLICH & COMPANY, DAVID E. ZEITLIN, HARRY L. ZEITLIN and LOUIS ZEITLIN, co-partners doing business under the firm name and style of SAMUEL ZEITLIN'S SONS, TOURAINE FLOWERS, INC., COSA CORPORATION, B. N. S. INTERNATIONAL SALES CORPORATION, W. L. M. BENSDORP COMPANY, N. V. TWEKA, TRICOTFABRIEKEN, DUESBERG-BOSSON MACHINES TEXTILES, CHARLES CENSOR, GARNINDUSTRIE G. m.

Docket Entries in American Smelting & Refining Company, et al.

b. H., A/S Dank Kodekstradt Company, Aabenraa, Andels-Svineslagteriet i. Kolding, United Nations and Edward S. Blake and "John" Boyle, the name "John" being fictitious, the true given name of said person being unknown, co-partners doing business under the firm name and style of Blake & Boyle

—against—

Black Diamond Steamship Corporation and Black Diamond Lines, Inc.

(K)

DATE		
July 9-53	Filed	libel & stip. for costs ($100. Indemnity Insurance Co. of N. A.)
July 9-53	Issued	Citation—Ret. 7/21/53.
July 14-53	Filed	citation with Marshal's return. Served Black Diamond Steamship Corp. on July 10, 1953.
July 31-53	Filed	Notice of Appearance.
July 31-53	"	Stip. for respondent's costs ($100. Natl. Surety Corp.)
Jan. 5-54	"	answer.
Jan. 11-54	"	note of issue for trial.
Feb. 18-54	"	interrogatories propounded by libellants.
Mar. 1-54	"	exceptions to interrogs. propounded by libellants.
Mar. 10-54	"	stip. & order extending time to answer interrogs. to 5/25/54. Edelstein, J.
June 8-54	"	answers to interrogatories.
June 10-54	"	libellants' exceptions to respondent's answers to interrogs.

Docket Entries in American Smelting & Refining Company, et al.

DATE		
June 10-54	Filed	notice of motion re: to produce and permit. Ret. 6/15/54.
June 14-54	"	stip. & order amending libel. nunc pro tunc. McGohey, J.
June 15-54	Memo	endorsed on motion papers filed 6/10/54. Motion withdrawn. McGohey, J.
July 22-54	Filed	respondent's answers to libellants' interrogs.
July 30-54	Filed	interrogatories. (Also in A178-370, A178-380 & 173-350)
Sept. 24-54	"	Libelant, American Smelting & Ref. Co.'s answer to interrogs. (Also in A178-370).
Oct. 1-54	"	exceptions and objections to libellants American Smelting & Refining Corp to respondent's interrogs. (Also in A 178-370)
Nov. 22-54	"	stip. & order substituting Dow & Symmers in place of Pyne Lynch & Smith as proctors for respt.
Jan. 5-55	"	notice of motion re: order requiring libellants to further answer the propounded interrogs. Ret. 1/11/55. (Also in A178-370, A178-380 and A173-350).
Jan. 25-55	Memo.	end. on motion papers filed 1/5/55. Motion disposed of as indicated upon argument. Submit order. Bicks, J. (Also in A178-370, A178-380 and A173-350).
Mar. 8-55	Filed	consent & order sustaining exceptions to respt's answers or failure to answer certain respt's. interrogs.; that liblts. answer respt's. interrogs. within ten days etc., etc. Bicks, J. (Also in A178-370, A178-380 & A173-350).

Docket Entries in American Smelting & Refining Company, et al.

DATE		
Mar. 21-55	Filed	Supplemental Answers to certain interrogs. (Also in A178-370 .
Sep 1 1955	Filed	notice of non-readiness for trial
Sep 1 1955	Filed	notice of non-readiness for trial
Dec. 23-55	Filed	order that Commission issue to Rotterdam, Kingdom of The Netherlands, etc. Walsh, J. (Also in A178-370 and A178-380)
Dec. 29-55	"	notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit and order revoking calendar dispositions, etc., Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit of Daniel L. Stonebridge. (Filed in A 174-34)
Jan. 12-56	"	direct. interrogs. propounded to Johannes Adrianus Driesprong, et al (Also in A178-370 and A178-380)
Jan. 12-56	"	direct. interrogs. propounded to Pieter Spaanderman. (Also in A178-370 and A178-380).
Feb. 6-56		Before Dimock, J. Trial begun. (Consolidated for trial with A174-34, A178-370 and A178-380.)
Feb. 7-56		Trial continued.
(M)		
Feb. 8-56		Trial continued. Libelant and Passenger claimant rest.
Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th and 27th.		Trial continued.
Feb. 28-56		Trial concluded. Decision reserved.

Docket Entries in American Smelting & Refining Company, et al.

DATE		
Mar. 22-56	Filed	Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Also in A174-34 and two other cases).
May 16-56	"	Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Filed in A174-34)
May 25-56	"	notice of motion re: to delete and strike as indicated. Ret. 5/29/56. (Filed in A174-34) and in 3 other cases.
July 18-56	"	amended memorandum (Opinion #22,-813) Dimock, J. (Filed in A 174-34)
July 23-56	"	second amended memorandum (Opinion #22,829) Dimock, J. (Filed in A 174-34)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 178-370)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 174-34)
Oct. 4-56	"	consent order for Finding of Facts and Conclusions of Law. Dimock, J. (Filed in A.174-34 & Also in A.178-370, A.178-380)
Nov. 28-56	Filed	bill of costs & final decree. Libel dismissed and resps. recover sum of $1212.70 costs taxed. Dimock, J.
Dec. 14-56	Filed	notice of appeal. Mailed copy to attorney 12-14-56.
Dec. 14-56	"	assignments of error.
Dec. 14-56	"	Bond Undertaking costs of appeal ($250. Ind. Ins. Co. of N. A.)

Libel and Complaint of American Smelting & Refining Company, et al.

(2711)

To the Honorable the Judges of the United States District Court for the Southern District of New York

The Libel and Complaint of American Smelting & Refining Company, Atkinson Haserick & Co., Anglo Fabrics Company, Inc., Frederick E. Aubel, Jr. & Frederick E. Aubel, III, co-partners doing business under the firm name of F. & E. Aubel, Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons, Atalanta Trading Corporation, Archer-Daniels-Midland Company, Ameurope Metals, Inc., Ernest Adler Co., Inc., American Over-Ocean Corporation, Associated Metals & Minerals Corporation, Stanley Wallach doing business as The Atlantic Works, Beatty & Hyde, Inc., Bracht & Co., Inc., The Baker Castor Oil Company, Browning Chemical Corporation, Bell Telephone Manufacturing Company, S. A., Budde & Westerman, D. Benedetto, Inc., Baloise Marine Insurance Company, Ltd., Cordingly Company, Capital Airlines, Columbia Export Co., Inc., Colonial Mirror & Glass Corp., Frederick H. Cone & Co., Inc., Cosa Corporation, Ezl. Dunwoody Co., Dickerson's Overseas Company, a Division of the Dickerson Company, Inc., A. de Swaan, Inc., Delmey Trading Corporation, The Enterprise Manufacturing Company of Pennsylvania, A. L. Erlanger Co., Inc., J. Eisenberg, Inc., European Chemical Co., Inc., Wm. S. Fehiger Co. & Intercontinental Wool Co., Robert S. Fish & Co., Inc., Federal Liquors, Ltd., Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co., Frieman Knitwear Corporation, Federated Department Stores, Inc., The F. & R. Lazarus & Company,

Div., Fein & Co., Inc., B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company, Frank A. G., Andrew Fisher Cycle Co., Inc., Fallani & Cohn Co., Inc., Garden Supply Sales Corporation, Gotaas Export Corporation, Robert A. Hurley & Co., Inc., Richard W. Homer doing business under the firm name and style of Richard W. Homer Company, A. H. Helmig & Co., Inc., (2712) Frank B. Healis & Co., ., Hohenberg Co., Inc., Industrial Sales Corporation, Innis Speiden & Co., Inc., Imperial International Corporation, Imex S. A., Import-Export Industries, Inc., International Expediters, Inc., Interstate Casing Corporation, J. M. Trading Corporation, Jacky Maeder & Co., Robt. Jowitt & Sons, Ltd., Kreglinger, Inc., H. M. Koeningswerther, Inc., Albert Kremper, Fred H. Lenway & Co., Inc., Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company, Lador S. A., Maryland Trading Corporation, Munro Kincaid Mottla, Inc., Mandel Brothers, Inc., Marble Supply Corporation of America, Monsanto Chemical Co., Marum Knitting Mills, Inc., Metasco, Inc., Mitropa Corporation, Miller Products Export Corporation, Merino Wool Corporation, Modern Exportation, Harry Liebowitz doing business as Modern Glass & Wire Supply Company, Mercaderias Peruanas S. A., Meyerhans & Cie. S. A., Etablissements Francois Masurel Freres, Norge Boats, Inc., John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company, North & Central American Hide Corporation,

Libel and Complaint of American Smelting & Refining Company, et al.

New Amsterdam Import Co., Inc., Richard M. Ott & Sons, Inc., Otis McAllister & Co., O'Neill Brothers, Inc., Parker Machine Co. Inc., Paper Corporation of United States, Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust, Pojhola Insurance Company, William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co., Joseph Rosenthal's Sons, Inc., S. Rosenfelder & Son, Inc., Reliance International Manufacturing Co., Walter H. Rothschild & Co. (2713) Inc., S. K. F. Industries, Inc., Irving M. Sobin Co., Inc., Jos. Sultan & Sons, Inc., Paul A. Straub & Co., Inc., E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company, Christopher Smiles & Co., Inc., F. Schumacher & Co., George Scherr & Co., Inc., William Steck & Co., Inc., Standard Sales Steel Co., Inc., J. Shore & Co., R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons, A. Samyn Permandt, Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.), Stein Hall & Co., Inc., Switzerland General Insurance Company, Ltd., William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co., F. H. Taussig, The Travelers Fire Insurance Company, Touraine Flowers, Inc., United Hat Fur Cutting Company, Bernhard Ullmann & Co., Inc., Ullmann-Allied Overseas Associates Ltd., Union des Fabriques Belges de Textiles Artificiels S. A., Firma J. van Beelen c. v., C. J. Van Houten & Zoon n. v., Western Dairy Products, Inc., S. H. Waldstein Co., Inc., Wool Distribut-

ing Corporation, Georg Wertheimer, W. W. Windle Company, Rembert Wurlitzer, Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company, David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons, Touraine Flowers, Inc., Cosa Corporation, B. N. S. International Sales Corporation, W. L. M. Bensdorp Company, N. V. Tweka, Tricotfabrieken, Duesberg-Bosson Machines Textiles, Charles Censor, Garnindustrie G. m. b. H., A/S Dank Kodekstradt Company, Aabenraa, Andels-Svineslagteriet i. Kolding, United Nations and Edward S. Blake and "John" Boyle, the name "John" being fictitious, the true given name of said person being unknown, co-partners doing business under the firm name and style of Blake & Boyle (2714) —against— Black Diamond Steamship Corporation and Black Diamond Lines, Inc., in causes of contract and non-delivery of cargo, civil and maritime, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: At all times hereinafter mentioned, libellants were, and they now are, individuals, co-partnerships and corporations as described on Schedule "A" hereto annexed, with offices and place of business as set out on the said Schedule "A".

Second: At all said times, Respondents Black Diamond Steamship Corporation and Black Diamond Lines, Inc., were, and now are, corporations duly organized, created and existing according to law, with offices and place of business at No. 39 Broadway, City, County and State of New York, within this District.

Third: At all said times, respondents were the charterers and operators of the S. S. "Black Gull", which at all said times respondents placed on berth and operated as a general ship in the common carriage of merchandise on the high seas for hire between certain Northern European ports and United States Atlantic ports.

Fourth: During the months of June and July, 1952, the shippers whose names are set out on Schedule "B" hereto annexed, delivered to respondents, among others, as common carriers at the respective ports of shipment set out on said Schedule, the shipments of merchandise described on said Schedule, opposite their respective names, in good order and (2715) condition, for transportation by said respondents, among others as common carriers from the respective ports of shipment to the ports of destination, set out on said Schedule, and delivery there, in like good order and condition as when shipped to the consignees whose names are set out on said Schedule, in consideration of certain agreed freights and in accordance with the valid terms of certain bills of lading signed and delivered to said shippers at the respective ports of shipment, by duly authorized agents of the respondents and others.

Fifth: Thereafter, the said shipments were shipped and placed on board the S. S. "Black Gull" at the respective ports of shipment by respondents, among others, and thereafter the said steamship having the said shipments on board sailed from her last port of loading and thereafter arrived at the port of New York in tow. The shipments described on Schedule "B" either have not been delivered at all to the persons entitled thereto or have been delivered to them short, slack and seriously injured and damaged, and such parts of said shipments

as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading. In addition, the persons entitled to delivery thereof were obliged to incur, and did incur, heavy expenses to obtain delivery of such portions of said shipments as were delivered.

Sixth: Prior to the arrival of the S. S. "Black Gull" at New York, and prior to the filing of this suit, libellants became for value the owners of the shipments described on Schedule "B" hereto annexed, as their names are set out on said Schedule "B" as libellants owners opposite the respective shipments or by payments to the respective (2716) owners of said shipments under their policies of insurance, became subrogated to the rights of said owners with respect to said shipments and the non delivery thereof or delivery thereof, in damaged condition and subject to liens and other expenses. Each libellant brings this suit with respect to the shipments opposite which his name is set out as libellant owner on Schedule "B" on his or its own behalf and on behalf of all others who may ultimately prove to be interested in said shipments as their respective interests may ultimately appear.

Seventh: Libellants and their respective predecessors in title and in interest, and those on whose behalf this suit is brought, have duly performed all the terms and conditions of the contracts of carriage on their respective parts to be performed.

Eighth: By reason of the premises, libellants and those on whose behalf this libel is filed have suffered and sustained damages in the sums set out on Schedule "C" hereto annexed, as nearly as the same can now be estimated, totaling $2,903,126., no part of any of which sums has been paid, although duly demanded.

Libel and Complaint of American Smelting & Refining Company, et al.

Ninth: All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellants pray:

1. That process in due form of law, according to the course and practice of this Court in causes of Admiralty and Maritime jurisdiction, may issue against Black Diamond Steamship Corporation and Black Diamond Lines, Inc., citing them to appear and answer on oath all and singular the matters (2717) aforesaid.

2. That the Court will order, adjudge and decree that the said respondents and the S. S. "Black Gull" pay to the libellants the damages suffered by each of them, together with interest thereon, and their costs and disbursements.

3. And that libellants have such other and further relief in the premises as in law and justice they may be entitled to receive.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 6, 1953.)

SCHEDULE A, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2719)

Claimant	Status	Place of Business
American Smelting & Refining Co.	Corporation organized according to law.	120 Broadway New York, N. Y.
Atkinson Haserick & Company	Corporation organized according to law.	211 Congress Street, Boston, Mass.
Anglo Fabrics Co., Inc.	Corporation organized according to law.	Webster, Mass.
Frederick E. Aubel, Jr. and Frederick E. Aubel, III	Co-partners d/b/u firm name and style of F. & E. Aubel	Philadelphia, Pa.
Olaf Ravndal	Treas. of Amer. Exp. Co., an unincorporated assoc. of more than 7 persons	65 Bway. New York, N. Y.
Atalanta Trading Corp.	Corporation organized according to law.	77 Hudson Street New York, N. Y.
Archer-Daniels-Midland Company	Corporation organized according to law.	233 Broadway New York, N. Y.
Ameurope Metals, Inc.	Corporation organized according to law.	122 East 42nd Street New York, N. Y.
Ernest Adler Co., Inc.	Corporation organized according to law.	67 Wall Street New York, N. Y.
American Overocean Corporation	Corporation organized according to law.	70 East 45th Street New York, N. Y.
Associated Metals & Minerals Corporation	Corporation organized according to law.	75 West Street, New York, N. Y.
Stanley Wallach	Individual d/b/a The Atlantic Works	370 Atlantic Avenue Boston, Mass.
Beatty & Hyde Inc.	Corporation organized according to law.	290 Summer Street Boston, Mass.
Bracht & Co., Inc.	Corporation organized according to law.	185 Summer Street Boston, Mass.
The Baker Castor Oil Company	Corporation organized according to law.	120 Broadway New York 5, N. Y.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

(2720)

Claimant	Status	Place of Business
Browning Chemical Corporation	Corporation organized according to law.	150 Broadway New York, N. Y.
Bell Telephone Manufacturing Company S. A.	Corporation organized under laws of Kingdom of Belgium.	Antwerp, Belgium
Budde & Westermann	New York Corporation	350 Broadway New York, N. Y.
D. Benedetto Inc.	Corporation organized according to law.	420 Lexington Avenue New York, N. Y.
The Baloise Marine Insurance Company, Ltd.	Corporation organized according to law.	Basle, Switzerland
Cordingley Company	Corporation organized according to law.	185 Summer Street Boston, Mass.
Capital Airlines	Corporation organized according to law.	National Airport, Washington, D. C.
Columbia Export Co., Inc.	Corporation organized according to law.	501 Fifth Avenue New York, N. Y.
Colonial Mirror & Glass Corp.	Corporation organized according to law.	40 Prince Street New York, N. Y.
Frederick H. Cone & Co. Inc.	Corporation organized according to law.	181 Front Street New York, N. Y.
Cosa Corporation	Corporation organized according to law.	405 Lexington Avenue New York, N. Y.
Ezl. Dunwoody Co.	Corporation organized according to law.	1909 Market Street Philadelphia, Pa.
Dickersons Overseas Company, a Div. of The Dickerson Company Inc.	Corporation organized according to law.	Drexel Building Philadelphia, Pa.
A. de Swaan Inc.	Corporation organized according to law.	37 Wall Street New York, N. Y.
Delmey Trading Corporation	Corporation organized according to law.	141 Broadway New York, N. Y.
The Enterprise Mfg. Co. of Pa.	Corporation organized according to law.	Philadelphia, Pa.

Schedule A, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

(2721)

Claimant	Status	Place of Business
A. L. Erlanger Company, Inc.	Corporation organized according to law	389 Fifth Avenue New York, N. Y.
J. Eisenberg, Inc.	Corporation organized according to law	173 Hudson Street New York, N. Y.
European Chemical Co., Inc.	Corporation organized according to law	366 Broadway New York, N. Y.
Wm. S. Febiger Co. and Intercontinental Wool Company	Massachusetts corporation	(Febiger) 250 Summer Street, Boston, Mass. (Intercontinental) 75 Federal Street, Boston, Mass.
Robert S. Fish & Company, Inc.	Corporation organized according to law.	185 Summer Street Boston, Mass.
Federal Liquors Ltd.	Corporation organized according to law.	54 Chardon Street Boston, Mass.
Lewis C. Franklin and Lewis C. Franklin, Jr.	Co-partners d/b/u firm name and style of Franklin & Company.	146 Summer Street Boston, Mass.
Frieman Knitwear Corporation	Corporation organized according to law.	147 West 35th Street New York, N. Y.
Federated Dept. Stores Inc., The F. & R. Lazarus & Company Division	Corporation organized according to law.	Columbus, Ohio
Fein & Co., Inc.	Corporation organized according to law.	250 West 30th Street New York, N. Y.
B. S. Bergesen and Jorgen Krag	Co-partners d/b/u firm name and style of Frosty Foods Company	161 East 42nd Street New York, N. Y.
Frank A. G.	Corporation organized according to law.	Basle, Switzerland
Andrew Fisher Cycle Co. Inc.	Corporation organized according to law.	619 West 54th Street New York, N. Y.
Fallani & Cohn Inc.	Corporation organized according to law.	14 East 38th Street New York, N. Y.

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(2722)

Claimant	Status	Place of Business
Garden Supply Sales Corporation	Corporation organized according to law.	550 West 55th Street New York, N. Y.
Gotaas Export Corp.	Corporation organized according to law.	20 Pine Street New York, N. Y.
Robert A. Hurley & Co., Inc.	Corporation organized according to law.	200 Summer Street Boston, Mass.
Richard W. Homer	Individual d/b/a Richard W. Homer & Company	212 Summer Street Boston, Mass.
A. H. Helmig & Co. Inc.	Corporation organized according to law.	121 Chestnut Street Philadelphia, Pa.
Frank B. Healis & Co. Inc.	Corporation organized according to law.	630 West Glenwood Avenue, Philadelphia, Pa.
Hohenberg Co. Inc.	Corporation organized according to law.	215 Fourth Avenue New York, N. Y.
Industrial Sales Corporation	Corporation organized according to law.	500 Fifth Avenue New York, N. Y.
Innis, Speiden & Co. Inc.	Corporation organized according to law	117 Liberty Street New York 6, N. Y.
Imperial International Corp.	Corporation organized according to law.	1776 Broadway New York, N. Y.
Imex S. A.	Corporation organized according to law.	Maracaibo, Venezuela
Import-Export Industries Inc.	Corporation organized according to law.	30 Rockefeller Plaza New York, N. Y.
International Expediters Inc.	Corporation organized according to law.	345 Hudson Street New York, N. Y.
Interstate Casing Corp.	Corporation organized according to law.	29 Vandewater Street New York, N. Y.
J, M. Trading Corp.	Corporation organized according to law.	111 West Jackson Blvd. Chicago, Ill.
(2723)		
Jacky Maeder & Co.	Entity existing under Swiss law	Geneva, Switzerland

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Claimant	Status	Place of Business
Robt. Jowitt & Sons Ltd.	Corporation organized according to law.	Bradford, England
Kreglinger, Inc.	Corporation organized according to law.	200 Summer Street Boston, Mass.
H. M. Koenigswerther Inc.	Corporation organized according to law.	127 West 30th Street New York, N. Y.
Albert Kremper	Individual	Apartado Postal 1528 Mexico City D. F., Mex.
Lador S. A.	Corporation organized according to law.	Ste.-Croix, Switzerland
Fred H. Lenway & Co. Inc.	Corporation organized according to law.	San Francisco, Calif.
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman.	Co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company.	42 Wall Street New York, N. Y.
Maryland Trading Corporation	Corporation organized according to law.	Princess Anne, Md.
Munro Kincaid Mottla Inc.	Corporation organized according to law.	11 Melcher Street Boston, Mass.
Mandel Brothers Inc.	Corporation organized according to law.	North State Street Chicago, Ill.
Marble Supply Corporation of America	Corporation organized according to law.	211 East 113th Street New York, N. Y.
Monsanto Chemical Company	Corporation organized according to law.	St. Louis, Missouri

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Claimant	Status	Place of Business
Monsanto Chemical Company	Corporation organized according to law.	St. Louis, Missouri
(2724)		
Marum Knitting Mills Inc.	Corporation organized according to law.	Lawrence, Massachusetts
Metasco Inc.	Corporation organized according to law.	401 Fifth Avenue New York, N. Y.
Mitropa Corporation	Corporation organized according to law.	50 Broadway New York, N. Y.
Miller Products Export Corp.	Corporation organized according to law.	29 Warren Street New York, N. Y.
Merino Wool Corporation	Corporation organized according to law.	79 Madison Avenue New York, N. Y.
Modern Exportation	Entity existing under the laws of the Kingdom of Belgium	Antwerp, Belgium
Harry Liebowitz	individual doing business as Modern Glass & Wire Supply Company	296 Broadway New York, N. Y.
Mercaderias Peruanas S. A.	Corporation organized according to law.	Lima, Peru
Meyerhans & Cie. S. A.	Corporation organized according to law.	Weinfelden, Switzerland
Etablissements Francois Masurel Freres	Corporation organized according to law.	Tourcoing, France
Norge Boats Inc.	Connecticut Corp.	Darien, Connecticut
John E. Murray and Charles S. Nicholson	Co-partners d/b/u firm name and style of Nicholson & Company	161 First Street Cambridge, Mass.
North & Central American Hide Corporation	Corporation organized according to law.	82 Wall Street New York, N. Y.
New Amsterdam Import Co. Inc.	Corporation organized according to law.	122 Chambers Street New York, N. Y.

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Claimant	Status	Place of Business
Richard M. Ott & Sons, Inc.	Corporation organized according to law.	256 Summer Street Boston, Mass.
(2725)		
Otis McAllister & Co.	Calif. Corporation	310 Sansome Street San Francisco, Calif.
O'Neill Brothers Inc.	Corporation organized according to law.	Philadelphia, Pa.
Parker Machine Co. Inc.	Corporation organized according to law.	158 Pioneer Street Brooklyn 31, N. Y.
Paper Corporation of United States	New York Corporation	630 Fifth Avenue New York, N. Y.
Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie	Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust	Boston, Mass.
Pohjola Insurance Company	Entity organized according to law.	Helsinki, Finland
William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore.	Co-partners d/b/u firm name and style of I. Reifsnyder Son & Co.	110 South Front Street Philadelphia 6, Pa.
Joseph Rosenthal's Sons Inc.	Corporation organized according to law.	190 West Berk Street Philadelphia, Pa.
S. Rosenfelder & Son Inc.	Corporation organized according to law.	Danbury, Connecticut
Reliance International Manufacturing Co.	Corporation organized according to law.	443 Broadway New York, N. Y.
Walter H. Rothschild Company, Inc.	Corporation organized according to law.	38 Park Row New York, N. Y.
S K F Industries Inc.	Corporation organized according to law.	Philadelphia, Pa.
Irving M. Sobin Co. Inc.	Corporation organized according to law.	72 Granite Street Boston, Mass.

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Claimant	Status	Place of Business
Jos. Sultan & Sons Inc.	New York Corp.	16 West 40th Street New York, N. Y.
Paul A. Straub & Co. Inc.	Corporation organized according to law.	19 East 26th Street New York, N. Y.
(2726)		
E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz, and Fred W. Perutz	Co-partners d/b/u firm name & style of Schabach & Company	60 Beaver Street New York, N. Y.
Christopher Smiles & Co. Inc.	Corporation organized according to law.	22 East 40th Street New York, N. Y.
F. Schumacher & Co.	Corporation organized according to law.	60 West 40th Street New York, N. Y.
George Scherr Co. Inc.	Corporation organized according to law.	200 Lafayette Street New York, N. Y.
William Steck & Co. Inc.	Corporation organized according to law.	39 Broadway New York, N. Y.
Standard Sales Steel Co. Inc.	Corporation organized according to law.	175 Fifth Avenue New York, N. Y.
J. Shore & Co.	Corporation organized according to law.	Chelsea, Mass.
R. K. Sterling and Maude A. Sterling	Co-partners d/b/u firm name and style D. L. Sterling & Sons	100 Hudson Street New York, N. Y.
A. Samyn Permandt	Entity existing under laws of Kingdom of Belgium	Antwerp, Belgium
Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)	Corporation existing under laws of Kingdom of Belgium	Angleur, Belgium
Stein, Hall & Company, Inc.	Corporation organized according to law.	285 Madison Avenue New York, N. Y.
Switzerland General Insurance Company, Ltd.	Corporation organized according to law.	Zurich, Switzerland

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Claimant	Status	Place of Business
William T. Newbold and James M. Reilly	Co-partners d/b/u firm name & style Nathan Trotter & Co.	24 State Street New York, N. Y.
F. H. Taussig	Individual	175 West 76th Street New York, N. Y.
The Travelers Fire Insurance Company	Corporation organized according to law.	Hartford, Connecticut
(2727)		
Touraine Flowers Inc.	Corporation organized according to law.	36 West 37th Street New York, N. Y.
United Hat Fur Cutting Company	Corporation organized according to law.	350 South Street Newark, N. J.
Bernhard Ulmann Co. Inc.	Corporation organized according to law.	30-20 Thomson Avenue L. I. C., N. Y.
Ullmann-Allied Overseas Associates, Ltd.	Corporation organized according to law.	131 West 30th Street New York, N. Y.
Union des Fabriques Belges de Textiles Artificiels S. A.	Corporation organized under the laws of the Kingdom of Belgium	Antwerp, Belgium
C. J. Van Houten & Zoon N. V.	Corporation organized according to law.	Weesp. Holland
Firma J. Van Beelen C. V.	Entity existing under laws of Kingdom of The Netherlands	Ijmuiden, Holland
Western Dairy Products Inc.	Corporation organized according to law.	San Francisco, Calif.
S. H. Waldstein Co. Inc.	Corporation organized according to law.	222 Summer Street Boston, Mass.
Wool Distributing Corporation	Corporation organized according to law.	253 Summer Street Boston, Mass.
Georg Wertheimer	Individual	Tangier, North Africa
W. W. Windle Company	Mass. Corporation	Millbury, Mass.

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Claimant	Status	Place of Business
Rembert Wurlitzer	Individual	12 West 42nd Street New York, N. Y.
Theodore Willich, Albert Willich and Anton F. Dolce	Co-partners d/b/u firm name & style of Willick & Company	9 Park Place New York, N. Y.
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin	Co-partners d/b/u firm name & style of Samuel Zeitlin's Sons	973 North 5th Street Philadelphia, Pa.
B. N. S. International Sales Corp.	Corporation organized according to law.	92 Liberty Street New York, N. Y.
W. L. M. Bensdorp Company	Corporation organized according to law.	89 Broad Street Boston, Mass.
N. V. Tweka Tricot-fabrieken	An entity Existing under laws of Kingdom of the Netherlands	Geldrop, Holland
(2728)		
Duesberg-Bosson Machines Textiles S. P. R. L.	A limited liability company existing under the laws of Belgium	Neerem, Belgium
Charles Censor	Individual	110 Riverside Drive New York, N. Y.
Garnindustrie G. M. B. H.	Limited liability company organized under laws of Germany	Munich
A/S Dansk Kodekstrakt Co., Aabenraa	Entity existing under Danish law.	Aabenraa, Denmark
Andels-Svineslagteriet i Kolding	Entity existing under Danish law.	Kolding, Denmark
United Nations	International organization established by charter of certain sovereign nations.	405 E. 42nd Street New York, N. Y.
Edward S. Blake and "John" Boyle (the name "John") being fictitious, the true given name of said person being unknown).	Co-partners d/b/u firm name & style of Blake & Boyle	201 E. 40th Street New York, N. Y.

SCHEDULE B, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2729)

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Mining Equipment Corp.—Rotterdam	645 ingots of Tin-Alloy of which Tin is component of chief value.	Order of American Smelting & Refining Co., notify same.—New York	American Smelting & Refining Co.
Asabel Ste. Ame. as Agents—Antwerp	7 cases worsted combers; 1 case textile machinery parts	Order of Atkinson Haserick & Company—Boston	Atkinson Haserick & Company
Edm. Van Meerbeek & Co. S. A. as agts. Antwerp	1 caisse Fil Carde Teint Simple Bout Pure Laine 11/12 N. M. (Woolen Worsted Yarn)	Order, notify Anglo Fabrics Co. Inc.—Boston	Anglo Fabrics Co. Inc.
S. A. Transaf as agents—Antwerp	26 lift bundles Angles	Order, notify Amerlux Steel Products Corp. Philadelphia	Frederick E. Aubel, Jr. and Frederick E. Aubel, III Co-partners d/b/u firm name & Style F. & E. Aubel

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
The American Express Company Inc. as agents—Antwerp	1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe) 2 cases machinery (spare parts)	Order of American Express Company New York	Olaf Ravndal, as Treas. of American Express Company
The American Express Company Inc. as agents—Antwerp	1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe), 1 case Machinery (lathe)	Order of American Express Company New York	Olaf Ravndal, as Treas. of American Express Company
Holstebro Svineslagteri, Holstebro. Aarhus with transshipment at Hamburg.	467 cases canned meat.	Order of Atalanta Trading Corp.—New York	Atalanta Trading Corp.
S. A. Sopro—Antwerp	200,000 kilos of crude Castor Seed Oil, 1st pressure in bulk.	Order, notify Archer-Daniels-Midland Company—New York	Archer-Daniels-Midland Company
(2730)			
Davum S. A. Belge as Agents Antwerp	12 packages Angles, 14 packages Squares-New Billet Basic Bessemer Steel Ordinary Quality.	Order of shipper, notify Ameurope Metals Inc. Boston	Ameurope Metals Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Van Duin & Co. Rotterdam	12 bags Cocoa Beans	Order, notify Ernst Adler Co. Inc.— New York	Ernest Adler Co. Inc.
S. A. Des Transports Simon Smits as agents—Antwerp	15 bales jute webbings	Order of American Overocean Corporation—Philadelphia	American Overocean Corporation
H. Klapwijk Contr. & Expeditiebedruf Rotterdam	747 ingots of Prime Western Zinc Brand V. M.	Order, notify the American Transport Union Corp.— New York	Associated Metals & Minerals Corp.
Carl Reinhard— Hamburg	73 cases cheese	Order of The Atlantic Works—Boston	Stanley Wallach
Carl Reinhard— Hamburg	78 cases cheese	Order of The Atlantic Works—Boston	Stanley Wallach
M. V. Handelmaatschappij Voor Wol & Zijde— Rotterdam	15 bales of wool noils	Order of National Shawmut Bank of Boston notify Beatty & Hyde Inc.—Boston	Beatty & Hyde Inc.
Andre Paternoster Antwerp	31 pressed bales of Cape Tops	Order, notify Bracht & Co. Inc.—Boston	Bracht & Co. Inc.
N. V. Handelsvereeniging Bolle & Schilthuis—Rotterdam	99,723 kilos of Dutch Castor Oil #1 in bulk.	Order of Guaranty Trust Company of N. Y. notify The Baker Castor Oil Company New York	The Baker Castor Oil Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Dobbertin & Kauffman—Hamburg	50 drums of Nickel Sulphate	Order of the National City Bank of N. Y. notify Browning Chemical Corporation.—Boston	Browning Chemical Corporation
Bell Telephone Manufacturing Company S. A.—Antwerp	1 case telephone material	Order of Federal Telephone & Radio Corporation—New York	Bell Telephone Manufacturing Company S. A.
N. V. Schenker & Co.'s Intern. Expeditie Rotterdam	5 cases of wire hoods for champagne bottles	Order of Budde & Westermann—New York	Budde & Westermann
Steinmann & Co. as agents—Antwerp	81 bales of Gunny Bagging (Scrap Bagging)	Order of The Irving Trust Co., notify D. Benedetto Inc.—New York	D. Benedetto Inc.
(2731)			
Kersten Hunik's Internationaal Transportbednij F. N. V., as agents Rotterdam	33 iron drums of vinyl cyanide	Wilson Export & Import Corporation New York	The Baloise Marine Insurance Company Ltd.
A. Samyn-Permandt, Verviers, as Agent Antwerp	5 bales of Noble N. Z. noils; 6 bales of Schlg. Austr. noils	Order of Second National Bank of Boston, notify Cordingley Company Inc.—Boston	Cordingley Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Plant-Owner
Natural Ltd. Basle Antwerp	7 bales wool noils	Order of Second National Bank of Boston, notify Cordingley Company Boston	Cordingley Company
A. Samyn-Permandt as Agent, Verviers Antwerp	6 bales Blousse Schlg. B. A. Lamb noils	Order of Second National Bank of Boston, notify Cordingley Company, Inc.	Cordingley Company
A. Samyn-Permandt, Verviers as Agent Antwerp	14 bales Schlg. Austral. noils	Order of Second National Bank of Boston, notify Cordingley Company, Inc. Boston	Cordingley Company
K. L. M. Royal Dutch Airlines Rotterdam	1 case aircraft engine	K. L. M. Royal Dutch Airlines—New York	Capital Airlines
Furness' Shipping & Agency Co. S. A. as agents Antwerp	1 case Milling-Drilling-Jigboring Machinery F. P. N.	Order of Columbia Export Co. Inc.—New York	Columbia Export Co. Inc.
S. A. Glaces et Verres (Glaver) Antwerp	23 cases of common window glass	Order of The Chase National Bank, notify Colonial Mirror & Glass Corp. New York	Colonial Mirror & Glass Corp.
S. A. Glaces et Verres (Glaver) Antwerp	28 cases Common Window Glass	Order of The Chase Natl. Bank, notify Colonial Mirror & Glass Corp.—New York	Colonial Mirror & Glass Corp.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
H. Datema as Agent—Rotterdam	18 cases of Bristles	Order of The Guaranty Trust Company of N. Y. New York	Frederick H. Cone & Co. Inc.
(2732)			
H. Datema as Agent—Rotterdam	7 cases of Bristles	Order of The Bank of New York and Fifth Avenue Bank New York	Frederick H. Cone & Co. Inc.
John Im Obersteg & Co. Ltd.—Rotterdam	1 case machinery n. o. s. & 1 case machinery n. o. s.	Order of Cosa Corporation, notify H. Schroeder Banking Corp.—New York	Cosa Corporation
Fasting & Co. N. V. Bremen	1000 bales of Horticultural Peat Moss	Order, notify Ezl. Dunwoody Co. Philadelphia	Ezl. Dunwoody Co.
Fasting & Co. N. V. Bremen	350 bales of Horticultural Peat Moss	Order, notify Ezl. Dunwoody Co. Philadelphia	Ezl. Dunwoody Co.
Huyser, Miller & Co. C. V.—Rotterdam	250 bags cocoa press cake	Order of Public Natl. Bank & Trust Company of N. Y. notify Middleton & Co., Ltd. a/c Dickersons Overseas Company—New York	Dickersons Overseas Company, a Division of The Dickerson Company, Inc.
J. H. Bachmann Bremen	50 bales Burlaps	Order of A. de Swaan Inc.—Boston	A. de Swaan Inc.
J. H. Bachmann Bremen	23 bales Burlaps	Order of A. de Swaan Inc.—Boston	A. de Swaan Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Walter Von Den Steinen—Hamburg	2 cases Bristles	Order, notify Delmey Trading Corporation New York	Delmey Trading Corporation
Intrapex N. V. Venlo Rotterdam	14 cases parts for meatchopping machines	Order of The Enterprice Mfg. Company of Pennsylvania—Philadelphia	The Enterprise Mfg. Company of Pennsylvania
Gebr. Hirdes Bremen	64 bales rayon waste	Order of Central Hanover Bank & Trust Company, notify A. L. Erlanger Company, Inc. Boston	A. L. Erlanger Company, Inc.
N. V. Handelmaatschappij Voor Wol En Zijde—Rotterdam	13 bales Wool Rags	Order of The Chase National Bank—New York	J. Eisenberg, Inc.
De Marex & Co. Bremen	700 paper bags of Magnesium Sulfate	Order of European Chem. Co. Inc., notify same New York	European Chemical Co. Inc.
Daher & Co., Antwerp as agents—Antwerp	15 bales combed wool	Order of Intercontinental Wool Company Boston	Wm. S. Febiger Co. and Inter-Continental Wool Company
(2733)			
S. A. Edmond Depaire, as Agents Antwerp	10 bales Wool Tops	Order, notify Intercontinental Wool Company—Boston	Wm. S. Febiger Co. and Intercontinental Wool Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. Samyn-Permandt, Verviers as Agent Antwerp	2 bales Noble N. Z. noils	Brown Brothers Harriman & Co. notify Robert S. Fish & Co. Inc. Boston	Robert S. Fish & Company, Inc.
Etablissements R. Castagnon & Co.—Bordeau via Rotterdam	100 casks Armagnac	Order of Chase Bank of New York, notify Federal Liquors Ltd. Boston	Federal Liquors Ltd.
A. Samyn Permandt as agents—Antwerp	17 bales Thread Waste	Order of First Natl. Bank of Boston notify Franklin & Co.—Boston	Lewis C. Franklin and Lewis C. Franklin Jr.
A. Samyn Permandt as agents—Antwerp	9 bales Thread Waste	Order of First Natl. Bank of Boston, notify Franklin & Co.—Boston	Lewis C. Franklin and Lewis C. Franklin Jr.
Van Kruchten & Co. as agents—Antwerp	2 cases mixed woolen rayon knitwear	Order of Dorf International, notify Frieman Knitwear Corp. New York	Frieman Knitwear Corp.
The American Express Company Inc. as shipper's agents Rotterdam	3 cases cotton rayon pieces goods	American Express Company—Boston	Federated Dept. Stores Inc., The F. & R. Lazarus & Company Division
Ste Danzas & Cie Antwerp	72 bales of raw dry rabbit skins	Order notify Fein & Co. Inc. New York	Fein & Co. Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Europa Frost Corporation, Neuer Fischereihafen, Hamburg-Altona Hamburg	680 packages of Ocean Perch 680/50 840 packages Cod Fillets 840/50	Order of shipper, notify Frosty Foods Company—New York	B. S. Bergesen and Jorgen Krag
Frank Ltd. Antwerp	13 cases Magnetos Vertex	Order of Davies Turner & Co., notify Griswold Mfg. Co. Philadelphia	Frank A. G.
Heinr. Ruppel & Sohn—Bremen	1 crate light metal-ware (bicycle parts)	Order Andrew Fisher Cycle Co. Inc. New York	Andrew Fisher Cycle Co. Inc.
Ag. Mar. A. Freyman & Van Loo S. P. R. L. as agents Antwerp	5 cases Linen Piece Goods	Order Fallani & Cohn Inc.— New York	Fallani & Cohn Inc.
Hanseatic Transport Gesellschaft Heinr. Bunger—Bremen	500 bales Peat Moss	Order Chase Natl. Bank, notify Garden Supply Sales Corp. Boston	Garden Supply Sales Corp.
(2734)			
Hanseatic Transport Gesellschaft Heinr. Bunger—Bremen	1,375 packages of peat moss	Order of Chase Natl. Bank, notify Garden Supply Sales Corp. New York	Garden Supply Sales Corporation
AB Meropa— Rotterdam	1000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons Boston	Gotaas Export Corp.

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. Samyn Permandt as agents—Antwerp	14 bales Thread Waste	Order Rockland Atlas Natl. Bank of Boston, notify R. A. Hurley & Co. Inc.—Boston	Robert A. Hurley & Co. Inc.
N. V. Handelmaatsch-appij Voor Wol & Zijde—Rotterdam	7 bales wool noils	Order of First Natl. Bank of Boston, notify Richard W. Homer & Company—Boston	Richard W. Homer
N. V. Handelmaatsch-appij Voor Wol & Zijde—Rotterdam	7 bales wool Noils	Order Girard Trust Corn Exchange Bank notify A. H. Helmig & Co. Inc.—Phila.	A. H. Helmig & Co. Inc.
F. L. Vandriesche & Co.—Antwerp	50 bales of raw wool	Order of Frank B. Healis & Co. Inc. Philadelphia	Frank B. Healis & Co. Inc.
S. A. Edmond Depaire, as agents Antwerp	10 cases woolen yarn	Order notify Hohenberg Co. Inc. New York	Hohenberg Co. Inc.
S. C. Anemarit as Agents Antwerp	3 lifts bars Angles	Order of Industrial Sales Corporation Boston	Industrial Sales Corporation
John Im Obersteg & Co. Ltd. Rotterdam	60 bags Swiss locust bean gum	Order of Innis Speiden & Co. Boston	Innis, Speiden & Co. Inc.
Matthias Rohde & Jorgens Bremen	1 case iron chains	Order of Public Natl. Bank & Trust Co., notify same New York	Imperial International Corp.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Matthias Rohde & Jorgens Bremen	10 cases of iron chains	Order of Public Natl. Bank & Trust Co., notify Imperial International Corp. New York	Imperial International Corp.
Leopold Schoeller & Sohne, c/o C. E. Berg & Co. Bremen	1 Fardo of Tejidos de Lana	Imex S. A., notify same—Maracaibo, Venezuela (port of discharge from vessel New York)	Imex S. A.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,493 ingots of tin	Order of shippers, notify Belgian American Banking Corporation— New York	Import-Export Industries Inc.
(2735)			
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,474 ingots of tin	Order of shippers, notify Belgian American Banking Corporation, New York	Import-Export Industries Inc.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,501 ingots of tin	Order of shippers, notify Belgian American Banking Corporation, New York	Import-Export Industries Inc.
J. H. Bachmann Bremen	24 cases Baryt Paper	Order of Walter Reimerdes, notify International Expediters Inc. New York	International Expediters Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Agence Maritime Belgo Danoise S. A. as agents Antwerp	2 casks salted casings	Order of Interstate Casing Corp., notify same—New York	Interstate Casing Corp.
Hanseatic Transport Gesellschaft Heinr. Bunger Bremen	100 packages of Peat Moss	Order of the Harris Trust and Savings Bank, notify Keer, Maurer Co.—Philadelphia	J. M. Trading Corp.
Jacky Maeder & Co. Antwerp	2 cases Alarm-clocks and chimney clocks	Order of The Bank of N. T. Butterfield & Son, notify Donald Leach.—Hamilton, Bermuda (port of discharge from vessel New York)	Jacky Maeder & Co.
Robt. Jowitt & Sons Ltd.—Antwerp	19 bales of Australian Merino Schlumberger Tops; 9 bales Australian Merino Schlumberger Tops	West Coast Line as Agents (Consignees under West Coast Line's bills of lading Order of Messrs. Roldan & Cia. Ltda., notify Tejidos Leticia Ltd.) New York (Destination named in West Coast Line's bills of lading Buena Ventura).	Robt. Jowitt & Sons Ltd.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
S. A. Bureau D'Expedition de la Compagnie Commerciale Kreglinger (Kregspedi) Antwerp	6 bales Australian drycombed tops	Order, notify Sidney Stockwell—Boston	Kreglinger, Inc.
S. A. Bureau etc. (same as above)	17 bales drycombed Cape Tops	Order, notify Sidney Stockwell—Philadelphia	Kreglinger Inc.
Kaufmann's Huidenhandel N. V.—Rotterdam	10 bales Raw Lambskins	Order of H. M. Koenigswerther—New York	H. M. Koenigswerther Inc.
A. Samyn Permandt Antwerp	20 cases harmless chemicals & 1 drum harmless chemicals	Order of Mr. Albert Kremper—New York (destination named in Mexican Line Bill of Lading, Vera Cruz)	Albert Kremper
(2736)			
La Continentale S. A. de Transports Internationaux Antwerp	32 cases Music Boxes	Order of Hensel Bruckmann & Lorbacher Inc. notify same—New York	Lador S. A.
Agence Maritime L. & J. Lalemant S. A. as agents Antwerp	1,466 ingots of Billiton tin	Order of shippers New York	Fred H. Lenway & Co. Inc.
Van Nievelt Goudriaan & Co. Rotterdam	1,033 bags of Cold Water Soluble Quebracho Extract marked Tuposol	Order of Brown Brothers Harriman & Co. notify Carl M. Loeb Rhoades & Company—Boston	Carl M. Loeb et al. Co-partners Carl M. Loeb, Rhoades & Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Messrs. Van Wagenberg-Festen C. V.—Rotterdam	455 cartons Froz. Strawberry Puree, 150 cartons Froz. Climax Strawberries, 1,113 cartons Froz. Jucunda Strawberries, 548 cartons Froz. Jucunda Strawberries, 50 cartons Froz. Strawberries Jucunda M.	Order of Maryland Trading Corporation New York	Maryland Trading Corporation
A. Samyn-Permandt as Agents Antwerp	10 bales N. Z. French Noils	Brown Bros. Harriman & Co., notify Munro Kincaid Mottla, Inc.—Boston	Munro Kincaid Mottla, Inc.
S. A. Dumanex as Agents—Antwerp	5 bales of wool noils	Order Boston	Munro Kincaid Mottla, Inc.
S. A. Dumanex as Agents—Antwerp	26 bales of wool noils	Order Boston	Munro Kincaid Mottla, Inc.
A. Samyn-Permandt as Agents—Rotterdam	19 bales of wool noils	Order of Brown Bros. Harriman & Co., notify Munro Kincaid Mottla, Inc. Boston	Munro Kincaid Mottla, Inc.
A. Samyn-Permandt as Agents—Antwerp	43 bales of wool noils—not carbonized	Order of The First Natl. Bank of Boston notify Munro Kincaid Mottla, Inc.—Boston	Munro Kincaid Mottla, Inc.
The American Express Company Inc. Bremen	1 case toys	Order of American Express Company, notify same—Boston	Mandel Brothers Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Strecker & Co. as Agents Antwerp	92 Slabs Rough Marble	Order, notify Marble Supply Corporation of America New York	Marble Supply Corporation of America
Ocket & Vander Straeten, Antwerp, as Agents Rotterdam	2,000 bags of naphthalene	Order, notify T. D. Downing—New York, option Boston	Monsanto Chemical Company
Ocket & Vander Straeten, Antwerp, as Agents Rotterdam	10 bags of naphthalene	Order, notify T. D. Downing—New York, option Boston	Monsanto Chemical Company
(2737)			
Ocket & Vander Straeten, Antwerp, as Agents Antwerp	100 bags of naphthalene	Order—New York, option Boston	Monsanto Chemical Company
Ocket & Vander Straeten, Antwerp, as Agents Antwerp	505 bags of naphthalene	Order—New York, option Boston	Monsanto Chemical Company
Phs. Van Ommeren, N. V. as agents only	3,333 bags hot pressed Crude Naphthalene	Order, notify T. D. Downing Co.	Monsanto Chemical Company
Deutsche Grosstransport-Gesellsschaft m. b. H. Nachfolger Carl Press—Antwerp	3 cases "men all wool socks"	Order of Marum Knitting Mills Inc. Boston	Marum Knitting Mills Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Max Gruenhut as Agent Bremen	1 case Crockery 1 case Hardware 3 cases Wooden bldg. blocks 1 case Toys 12 cases Toys 2 cases Woodenware	Order of Metasco, Inc., notify The American Express Co.—Boston	Metasco, Inc.
Steinmann & Co. as agents Antwerp	1 bale Handwoven Dresses (100% Wool)	Order of Metasco Inc., notify same Boston	Metasco Inc.
Sembodja Malaya N. V. Rotterdam	1 case 50 Lenses Xenon 1:2,0 with copled view-range finder and 50 Lense Shades 36	Order, notify Mitropa Corp. New York	Mitropa Corporation
Van Nievelt Goudriaan & Co. Rotterdam	117 cartons rubber boots	Grace Line Inc. (Consignee named in bill of lading Sr. Regino Romero B.)—New York (Destination named in b/l Maracaibo)	Miller Product Export Corp.
Furness Transport N. V. (as forwarding agents)—Rotterdam	120 bales France drycombed top 64's	Order of the First Natl. Bank of Boston Boston	Merino Wool Corporation
Modern Exportation as Agents Antwerp	1 case Brass Frames for Ladies Handbags Polished	Order of Shipper, notify Lesco Ltd. New York	Modern Exportation
Modern Exportation as Agents Antwerp	8 cases Brass Frames for Ladies Handbags Polished	Order of Shipper notify Coronet Handbags, Inc.	Modern Exportation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Modern Exportation as Agents Antwerp	1 case Brass Frames for Ladies Handbags Polished	Order of Shipper notify Walnut Novelty Co. Inc.	Modern Exportation
N. V. Schenecker & Co.'s Intern. Expeditie Rotterdam	1 case Replacement parts for Chandeliers	Order, notify Modern Glass & Wire Supply Company New York	Harry Leibowitz
(2738)			
J. H. Bachmann as agents for Grace Line—Bremen	12 cases of Toys	Order of Grace Line, Inc. (Consignee named in Grace Line b/l Bancode credito del peru) Notify Mercaderias Peruanas S. A. New York (destination named in Grace Line b/l Callao)	Mercaderias Peruanas S. A.
John Imobersteg & Company, Ltd. Rotterdam	40 bags of Swiss locust bean gum	Order of H. P. Rossiger & Company, Inc. New York	Meyerhans & Cie. S. A.
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—Philadelphia	Etablissements Francois Masurel Freres

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	4 bales woolen yarn hand knitting (Files de laine)	Order of James Talcott, Inc. Factors notify Lep Transport Inc.—New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 cases woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres
Steinmann & Co. as agents Antwerp	2 bales woolen yarn hand knitting (Files de laine)	Order notify James Talcott, Inc. Factors New York	Etablissements Francois Masurel Freres

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Steinmann & Co. SPRL as agents Antwerp (Shippers named in West Coast Line b/l H. D. Cottrell as agents)	6 cases woolen yarn hand knitting (Files de laine); 11 cases woolen yarn; and 1 case and 12 bales of woolen yarn.	West Coast Line, Inc. (consignees named in West Coast Line b/l as Follows: Guayaquil 1-Order notify Fabrico de Tejidos de Punto "Texval" Florencio N. Valencia. Callao b/l No. 1—Order notify Compania Textil Borelly and Fournier S/A. Callao b/l #2—Order notify Fabrica Nacional de Tejidos de Santa Catalina New York (Guayaquil & Callao)	Etablissements Francois Masurel Freres
(2739)			
W. H. R. Van Dam Inc.—Rotterdam	1 unpacked sailing Yacht with motor (protected by cradle)	Order of Norge Boat Inc.— New York	Norge Boats Inc.
Swiss Shipping Co. Ltd.—Antwerp	200 bags Foamless Pearl Glue	Order of First Natl. Bank of Boston—Boston	John E. Murray and Charles S. Nicholson
N. V. Transportmaatschappij Binneveld Schellen as Agents Rotterdam	15 cases of Box-calf Leather	Order of North & Central American Hide Corporation New York	North & Central American Hide Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
"NESKA" Bremen Bremen	750 bales of Horticultural Peat Moss—Burlap Wrapped	Order Hellenic Bank Trust Company, notify New Amsterdam Import Co. Inc. Boston, option New York, Phila.	New Amsterdam Import Co. Inc.
Jacques Driessen Antwerp	7 bales Schlemberger B/Ayres Coils	Order First Natl. Bank of Boston, notify Richard M. Ott & Sons Inc. Boston	Richard M. Ott & Sons, Inc.
Vinke & Co. as Agents Rotterdam	850 bags of coffee	Order of Otis McAllister & Co. Boston	Otis McAllister & Co.
Rodolphs Haller S. A. Bremen	39 bales of Cotton Waste	Order of Phila. Natl. Bank, notify O'Neill Bros. Inc. Philadelphia	O'Neill Brothers Inc.
Laagland N. V. Industrie & Handelmy Rotterdam	1 case S. T. C. Parts for Hercules 22" Shaper (F. 6320)	Parker Machine Co. Inc. New York	Parker Machine Co. Inc.
Blaauwvriesveem Belge S. A. as Agents Antwerp	70 Barrelled Rolls White Baryta Coated Paper	Order of Paper Corporation of United States, notify same. New York	Paper Corporation of U. S.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
B. I. De Vries & Co. Bremen	50 bales of New German Burlap	Order of the Natl. Shawmut Bank of Boston Boston	Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie
B. I. De Vries & Co. Bremen	25 bales of New German Burlap	Order of the Natl. Shawmut Bank of Boston Boston	Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie
Valio Co-Operative Butter Export Assoc. Hamburg	68 cases Emmental Cheese & 250 cases Cheese	Dr. V. O. Jarvenen New York	Pohjola Insurance Company
(2740)			
N. V. Handelmaatschappij Voor Wol & Zijde—Rotterdam	6 bales Wool Noils	Girard Trust Corn Exchange Bank, notify I. Reifsnyder Son & Co.—Phila.	William A. Longshore, et al. co-partners d/b/u I. Reifsnyder Son & Co.
Mining Equipment Corp.—Rotterdam	634 ingots of Tin-alloy of which Tin is component of chief value.	Order of Jos. Rosenthal, notify same. Philadelphia	Joseph Rosenthal's Sons Inc.
Mining Equipment Corp.—Rotterdam	949 ingots of Tin-alloy of which Tin is component of chief value.	Order of Jos. Rosenthal, notify same. Philadelphia	Joseph Rosenthal's Sons Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Kaufmann's Heidenhandel N. V.—Rotterdam	27 bales of Raw Hareskins	Order of The Grace Natl. Bank of N. Y., notify Freedman & Slater, Inc. New York	S. Rosenfelder & Son Inc.
J. H. Bachmann Bremen	4 casks Iron Chains	Order of Manufacturers Trust Co., notify Reliance Pet Supply Inc.—New York	Reliance International Mfg. Co.
J. H. Bachmann Bremen	3 casks Iron Chains	Order of Manufacturers Trust Co., notify Reliance Pet Supply Inc.—New York	Reliance International Mfg. Co.
Matthias Rohde & Jorgens—Bremen	10 cases Iron Chains	Order of Corn Exchange Bank Trust Company, notify Reliance International Mfg. Ltd. New York	Reliance International Mfg. Co.
Rene Migret Antwerp	54 bundles Steel Angles	Order of Manufacturers Trust Company notify Walter H. Rothschild & Co. New York	Walter H. Rothschild Company Inc.
J. H. Bachmann Bremen	37 cases of ball and roller bearings	Order of Phila. Natl. Bank, notify SKF Industries Inc. Philadelphia	SKF Industries Inc.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Brusse & Sippel Rotterdam	100 drums Sodium Perborate	Order of Natl. Shawmut Bank of Boston, notify Irving M. Sobin Co. Inc. Boston	Irving M. Sobin Co. Inc.
N. V. Handelsmaatschapij "Alesco" Bremen	500 bags of Epsom Salts	Order, notify Irving M. Sobin Co. Inc.—Boston	Irving M. Sobin Co. Inc.
N. V. Handelsmaatschapij "Alesco" Bremen	180 jute bags Nitrate of Potash (Fertilizer)	Order, notify Irving M. Sobin Co. Inc.—Boston	Irving M. Sobin Co. Inc.
(2741)			
Ag. Mar. A. Freyman & Van Loo S. P. R. L. as Agents—Antwerp	16 bales of linen piece goods	Order of The Irving Trust Company New York	Jos. Sultan & Sons Inc.
J. H. Bachmann Bremen	5 cases hollow glassware	Order of Paul A. Straub & Co. Inc. New York	Paul A. Straub & Co. Inc.
J. H. Bachmann Bremen	2 cases hollow glassware	Order of Paul A. Straub & Co. Inc. New York	Paul A. Straub & Co. Inc.
Reyniers Freres Antwerp	27 bales Australian Schlumberger Noils	Order of Bankers Trust Company, notify Messrs. Schwabach & Co.—Boston	E. Richard Schwabach, et al, co-partners d/b/u Schwabach & Company

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Daher & Co. as Agents—Antwerp	25 bales of New Belgian Burlap	Order of Chemical Bank & Trust Company notify Christopher Smiles & Co. Inc.—New York	Christopher Smiles & Co. Inc.
A. Samyn Permandt as Agents Antwerp	4 cases Pure Linen Goods	Order of F. Schumacher & Co. New York	F. Schumacher & Co.
A. Samyn Permandt as Agents Antwerp	3 cases Pure Linen Goods	Order of F. Schumacher & Co. New York	F. Schumacher & Co.
Carl Prior Bremen	3 cases of Measuring Instruments	Order of George Scherr Co. Inc. New York	George Scherr Co. Inc.
A. Schrauwen Antwerp	59 bales of No. 1 Sound Bagging	Order of The Natl. City Bank of N. Y. notify William Steck & Co. Inc. New York	William Steck & Co. Inc.
Ed. Van Dijck as Agent—Antwerp	11 bundles of steel channels	Order of Trade Bank & Trust Company, notify Standard Sales Steel Co. Inc. Philadelphia	Standard Sales Steel Co. Inc.
Pijnenburg's Weverijen, N. V. Rotterdam	49 bales of Burlap	Order of J. Shore & Co.—Boston	J. Shore & Co.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
A. B. Meropa Rotterdam	1,000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons Boston	R. K. Sterling and Maude A. Sterling
A. B. Meropa Rotterdam	1,000 paper bags Roller Process Whole Milkpowder	Order, notify D. L. Sterling & Sons New York	R. K. Sterling and Maude A. Sterling
(2742) Allied Creameries Ltd.—Rotterdam	760 strong paper bags Roller Process Whole Milkpowder	Order of The Natl. City Bank of N. Y. notify D. L. Sterling & Sons—New York	R. K. Sterling and Maude A. Sterling
A. Samyn Permandt as Agents—Antwerp	2 cases Baby Shawls	Order of Chemical Bank & Trust Co. notify S. Flomenhaft Inc.—New York	A. Samyn Permandt
Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.) Antwerp	10 cases Cadmium in balls	Order, notify Steel Heddle Mfg. Co.—Phila.	Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)
Societe des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.) Antwerp	10 cases Cadmium in balls; 10 cases Cadmium in rods	Order of Harmon Lichtenstein & Co. New York	Societe Des Mines et Fonderies de Zinc de la Vieille Montagne (S. A.)
B. I. deVries & Co. Textiel N. V. Bremen	27 bales German Burlap	Order of Brown Bros. Harriman & Company—New York	Stein, Hall & Company, Inc.

Schedule B, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
B. I. deVries N. V. Textile Bremen	25 bales German Burlap	Order of Brown Bros. Harriman & Company—Boston	Stein, Hall & Co. Inc.
C. Blenk & Fert Rotterdam	38 tubs Swiss loaf cheese	Order of credit Suisse New York Agency, notify S. Stern Henry & Company—New York	Switzerland General Insurance Company Ltd.
Mining Equipment Corp.—Rotterdam	318 ingots of Tin-Alloy of which Tin is component of chief value.	Order of Nathan Trotter Co., notify same. New York	William T. Newbold and James M. Reilly
Van Nievelt Goudriaan & Co. Rotterdam	200 bags of Chemicals	Order of F. H. Taussig New York	F. H. Taussig
S. A. Dumanex Antwerp	50 bales Duvets (Down)	Order, notify Purofied Down Products Corporation—New York	The Travelers Fire Insurance Company
Carl Prior Bremen	1 case China	Order of Manuel Peck—New York	Touraine Flowers Inc.
Carl Prior Bremen	1 case China	Order of Mr. Max Brandes c/o Touraine Flowers Inc. New York	Touraine Flowers Inc.
Crowe & Co. S. A. as agents Antwerp	10 bales raw rabbit skins	Order of Public Natl. Bank & Trust Company—New York	United Hat Fur Cutting Company

(2743)

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Ag. Mar. A. Freyman & Van Loo. S. P. R. L. as Agents—Antwerp	24 cases Linen Piece Goods	Order of Messrs. Bernard Ulmann Co. Inc.—New York	Bernhard Ulmann Co. Inc.
A. Samyn Permandt as Agents—Antwerp	22 bales Wool Noils	Order of Ullmann-Allied Overseas Associates, Ltd. Boston	Ullmann-Allied Overseas Associates, Ltd.
Arthur Maes as Agent—Antwerp	147 bales staple fabre (Swina)	Order of Haemseth Kerner Corporation, notify Stonecutter Mills Corporation New York	Union des Fabriques Belges de Textiles Artificiels S. A.
C. J. Van Houten & Zoon N. V.—Rotterdam	500 bags cocoa powder 18/20-J (loose) New York	Order, notify C. J. Van Houten & Zoon, Inc. New York	C. J. Van Houten & Zoon N. V.
C. J. Van Houten & Zoon, N. V. Rotterdam	400 cartons cocoa powder "Gold Label" in tins; 500 cartons cocoa powder "Rona" (loose); 40 cartons cocoa powder "Suma" (loose); 25 bbls. cocoa powder "Rona" (loose); 100 bags cocoa powder "Rona" (loose); 60 bags cocoa powder "X F" (Extra Fine) (loose).	Order, notify C. J. Van Houten & Zoon Inc. New York	C. J. Van Houten & Zoon N. V.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
C. J. Van Houten & Zoon N. V. Rotterdam	300 bags cocoa powder 10/12% (loose)	Order, notify C. J. Van Houten & Zoon, Inc. New York	C. J. Van Houten & Zoon N. V.
Fa. J. van Beelen C. V.—Rotterdam	19 bales Manila sections of trawl-nets; 1 bundle steel floats; 8 bags Iron Shakles	Order of The Fulton Supply Company New York	Firma J. Van Beelen C. V.
Nationale Cooperatieve Zuivelverkoop-centrale Rotterdam	960 crates powdered whole milk	Order, notify J. H. Hobson Company Philadelphia	Western Dairy Products Inc.
S. A. Des Transports Simon Smits as Agents Antwerp	125 balles Dechets de Coton (Coton waste)	Chase Natl. Bank, notify S. H. Waldstein & Co.—Boston	S. H. Waldstein Co. Inc.
Societe Belge de Transports Louis Duforest snc as agents—Antwerp	21 bales Wool Tops	Order, notify Wool Distributing Corp. Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as agents—Antwerp	18 bales Wool Tops	Order, notify Wool Distributing Corp. Boston	Wool Distributing Corporation
(2744)			
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	36 bales of Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	9 bales of Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	68 bales Wool Tops	Order, notify Wool Distributing Corporation—Bostor	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	46 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	63 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	87 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	44 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	51 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	37 bales Wool Tops	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	1 bale Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	28 bales Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	34 bales Scoured Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	80 bales Scoured Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	100 bales Greasy Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	100 bales Greasy Cap Wool	Order, notify Pistorino Co. Ltd.—Boston	Wool Distributing Corporation

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	56 bales Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation
(2745)			
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	150 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	45 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	192 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	8 bales of Scoured Wool	Order of shippers, notify Pistorino Boston	Wool Distributing Corporation.
Societe Belge de Transports Louis Duforest snc as Agents—Antwerp	41 bales of Wool Noils	Order, notify Wool Distributing Corporation—Boston	Wool Distributing Corporation.
Societe Commerciale D'Affretements Et De Commission S. A. Antwerp	30 bales of Scoured Wool	Order of shippers, notify Pistorino	Wool Distributing Corporation.

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
P. van Doosselaere & Co. as agents Antwerp	7 bags of Used Postage Stamps	Order of H. E. Harris & Co.—Boston	Georg Wertheimer
A. Samyn Permandt as Agent—Antwerp	4 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	6 bales Wool Noils—not carbonized	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	6 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	12 bales Schlumberger Australian Noils; 7 bales Willeyed Waste; 2 bales Montevideo Noils: 31 bales Carbonized Waste; 14 bales Schlumber Australian Noils; 30 bales Carbonized Waste	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
A. Samyn Permandt as Agent—Antwerp	23 bales Schlumberger Australian Noils	Order of Merchants Natl. Bank of Boston notify W. W. Windle & Co.—Boston	W. W. Windle Company
J. H. Bachmann Bremen	2 cases Musical Instruments	Order of Rembert Wurlitzer New York	Rembert Wurlitzer

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Van Schaardenburg & Co. N. V. Rotterdam	1,166 jute bags Brewer's Rice	Order, notify Willich & Co.	Theodore Willich, Albert Willich and Anton F. Dolce
(2746)			
Max Heudenfeld Hamburg	2 cases Bristles	Order, notify Samuel Zeitlin's Sons—Phila.	David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin
Kraft & Company N. V.—Rotterdam	100 cases cooked boneless and skinless hams in tins	Order B. N. S. International Sales Corp. Notify R. B. Wilcon Company—Boston	B. N. S. International Sales Corp.
Bensdorp N. V. Rotterdam	221 drums of cocoa powder	Order notify W. L. M. Bensdorp—Boston	W. L. M. Bensdorp Company
N. V. Tweka Tricot-fabrieken	17 bales pure wool swim suit cutting room waste	Order of Cleveland Trust Company. Notify L. S. Glauber New York	N. V. Tweka Tricotfabrieken
Arthur Maes as agent— Antwerp	2 cases spare parts for textile machinery	Order notify E. Sydney Stockwell for account of Duesberg Bosson of America, Inc. Boston	Duesberg-Bosson Machines Textiles S. P. R. L.
Crowe & Co. S. A. as agents Antwerp	1 case glassware	Order of Vandegrift Forwarding Company, Inc. New York	Charles Censor

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
J. H. Sachmann as agents for Grace Line (Shipper named in Grace Line b/l Matthias Rhode & Jorgens)—Bremen	14 cases cotton yarn	Grace Line, Inc. Notify same. (Consignee named in Grace Line b/l Banco Mercantile Cochambamba. Notify Gibbs Williamson Ltd. Antofagasta) New York (desination named in Grace Line b/l Antofagasta)	Garnindustrie G. N. B. H.
A/S Dansk Kodek-strakt Co., Aabenraa Aabenraa (Placed on "Black Gull" at Hamburg)	200 cases tinned hams	Danish Food Packers, Inc.—New York	A/S Dansk Kodekstrakt Co., Aabenraa
Andels-Svineslagter-iet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svines-lagteriet i Kolding
Andels-Svineslagter-iet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svines-lagteriet i Kolding

Shipper & Port of Shipment	Merchandise	Consignee & Port of Destination	Libellant-Owner
Andels-Svineslagteriet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svineslagteriet i Kolding
Andels-Svineslagteriet i Kolding Kolding (placed on board "Black Gull" at Hamburg)	250 cases canned goods	Order notify Baltic Trading Company, Ltd.—New York	Andels-Svineslagteriet i Kolding
La Continentale S. A. de Transports Internationaux—Antwerp	1 carton, 2 cases & 2 cartons printing paper	Order Hensel Bruckmann & Lorbacher, Inc. New York	United Nations
Strecker & Co. as agents Antwerp	3 crates Rough Marble Slabs	Order, notify Blake & Boyle—New York	Edward S. Blake & "John" Boyle (name "John") being fictitious, true name unknown

SCHEDULE C, ANNEXED TO LIBEL AND COMPLAINT OF AMERICAN SMELTING & REFINING COMPANY, ET AL.

(2747)

Claimant	Amount of Damages
American Smelting & Refining Co.	$ 26,500.00
Atkinson Haserick & Company	14,000.00
Anglo Fabrics Co Inc.	475.00
Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name & style of F. & E. Aubel	3,500.00
Olaf Ravndal, as Treas. of American Express Company	20,000.00
Atalanta Trading Corp.	23,000.00
Archer-Daniels-Midland Company	57,500.00
Ameurope Metals, Inc.	4,000.00
Ernest Adler Co. Inc.	625.00
American Overocean Corporation	500.00
Associated Metals & Minerals Corporation	6,250.00
Stanley Wallach d/b/a The Atlantic Works	2,750.00
Beatty & Hyde, Inc.	4,500.00
Bracht & Co., Inc.	31,000.00
The Baker Castor Oil Company	52,500.00
Browning Chemical Corporation	4,100.00
Bell Telephone Manufacturing Company S. A.	350.00
Budde & Westermann	750.00
D. Benedetto Inc.	2,000.00
Baloise Marine Insurance Company, Ltd.	6,050.00
Cordingley Company	13,500.00
Capital Airlines	36,000.00
Columbia Export Co. Inc.	1,750.00
Colonial Mirror & Glass Corp.	4,000.00
Frederick H. Cone & Co. Inc.	11,250.00
Cosa Corporation	39,000.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Ezl. Dunwoody Co.	$ 3,250.00
Dickersons Overseas Company, A division of The Dickerson Company, Inc.	12,500.00
(2748)	23,500.00
A. De Swaan Inc.	2,100.00
Delmey Trading Corporation	5,850.00
The Enterprise Manufacturing Company of Pa.	4,750.00
A. L. Erlanger Company Inc.	5,250.00
J. Eisenberg, Inc.	1,400.00
European Chemical Co. Inc.	28,500.00
Wm. S. Febiger Co. and Intercontinental Wool Company	1,000.00
Robert S. Fish & Co. Inc.	20,000.00
Federal Liquors, Ltd.	6,100.00
Lewis C. Franklin and Lewis C. Franklin, Jr. Co-partners d/b/u firm name & style of Franklin & Company	4,000.00
Frieman Knitwear Corporation	1,100.00
Federated Department Stores Inc., The F. & R. Lazarus & Company Division	11,750.00
Fein & Co. Inc.	14,000.00
B. S. Bergesen & Jorgen Krag, Co-partners d/b/u firm name & style of Frosty Foods Company	7,850.00
Frank A. G.	125.00
Andrew Fisher Cycle Co. Inc.	3,000.00
Fallani & Cohn Inc.	5,000.00
Garden Supply Sales Corporation	15,750.00
Gotaas Export Corp.	6,250.00
Robert A. Hurley & Co. Inc.	3,750.00
Richard W. Homer d/b/a Richard W. Homer & Company	

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
A. H. Helmig & Co. Inc.	$ 3,500.00
Frank B. Healis & Co. Inc.	8,000.00
Hohenberg Co. Inc.	7,250.00
Industrial Sales Corporation	450.00
Innis, Speiden & Co. Inc.	2,000.00
Imperial International Corp.	1.750.00
Imex S. A.	1,300.00
Import-Export Industries Inc.	— 420,000.00
(2749)	
International Expediters Inc.	13,000.00
Interstate Casing Corp.	11,000.00
J. M. Trading Corp.	350.00
Jacky Maeder & Co.	425.00
Robt. Jowitt & Sons Ltd.	33,000.00
Kreglinger, Inc.	18,500.00
H. M. Koenigswerther Inc.	15,000.00
Albert Kremper	300.00
Lador S. A.	16,500.00
Fred H. Lenway & Co. Inc.	30,000.00
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, Co-partners d/b/u the firm name and style of Carl M. Loeb Rhoades & Company	15,000.00
Maryland Trading Corporation	24,000.00
Munro Kincaid Mottla Inc.	42,500.00
Mandel Brothers Inc.	175.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Marble Supply Corporation of America	$ 2,500.00
Monsanto Chemical Company	52,500.00
Monsanto Chemical Company	42,500.00
Marum Knitting Mills Inc.	6,250.00
Metasco, Inc.	6,250.00
Mitropa Corporation	1,950.00
Miller Products Export Corp.	2,150.00
Merino Wool Corporation	78,000.00
Modern Exportation	4,000.00
Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company	125.00
(2750)	
Mercaderias Peruanas S. A.	2,500.00
Meyerhans & Cie. S. A.	1,300.00
Etablissement Francois Masurel Freres	26,500.00
Norge Boats Inc.	13,000.00
John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company	3,750.00
North & Central American Hide Corporation	29,000.00
New Amsterdam Import Co. Inc.	2,150.00
Richard M. Ott & Sons, Inc.	2,150.00
Otis McAllister & Co.	52,500.00
O'Neill Brothers Inc.	5,500.00
Parker Machine Co., Inc.	100.00
Paper Corporation of United States	7,500.00
Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust	18,000.00
Pohjola Insurance Coompany	15,200.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr., and Russell E. Longshore, Co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.	$ 2,050.00
Jos. Rosenthal's Sons Inc.	65,000.00
S. Rosenfelder & Son Inc.	10,500.00
Reliance International Manufacturing Co.	2,250.00
Walter H. Rothschild & Company, Inc.	8,000.00
S K F Industries Inc.	6,000.00
Irving M. Sobin Co. Inc.	7,000.00
Jos. Sultan & Sons Inc.	6,500.00
Paul A. Straub & Co. Inc.	2,050.00
E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company	10,500.00
(2751)	
Christopher Smiles & Co. Inc.	7,000.00
F. Schumacher & Co.	6,900.00
George Scherr Co. Inc.	3,850.00
William Steck & Co. Inc.	1,750.00
Standard Sales Steel Co. Inc.	1,900.00
J. Shore & Co.	7,850.00
R. K. Sterling and Maude A. Sterling, Co-partners d/b/u the firm name and style of D. L. Sterling & Sons	45,000.00
A. Samyn Permandt	2,000.00
Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.)	50,000.00
Stein, Hall & Company, Inc.	8,500.00
Stein, Hall & Company, Inc.	6,250.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Switzerland General Insurance Company, Ltd.	$ 17,250.00
William T. Newbold and James M. Reilly, co-partners d/b/u the firm name and style of Nathan Trotter & Co.	13,000.00
F. H. Taussig	2,850.00
The Travelers Fire Insurance Company	52,000.00
Touraine Flowers Inc.	800.00
United Hat Fur Cutting Company	4,250.00
Bernhard Ulmann Co. Inc.	19,000.00
Ullmann-Allied Overseas Associates, Ltd.	13,500.00
Union Des Fabrique Belges De Textiles Artificiels S. A.	21,000.00
C. J. Van Houten & Zoon N. V.	27,500.00
Firma J. Van Beelen C. V.	2,650.00
Western Dairy Products Inc.	40,500.00
S. H. Waldstein Co. Inc.	8,750.00
Wool Distributing Corporation	67,500.00
Wool Distributing Corporation	602,500.00
Georg Wertheimer (2752)	550.00
W. W. Windle Company	30,000.00
W. W. Windle Company	7,250.00
Rembert Wurlitzer	1,650.00
Theodore Willich, Albert Willich and Anton F. Dolce, Co-partners d/b/u the firm name and style of Willich & Company	21,026.00
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, Co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons	1,250.00
B. N. S. International Sales Corp.	6,250.00
W. L. M. Bensdorp Company	5,000.00
N. V. Tweka Tricotfabrieken	1,750.00

Schedule C, Annexed to Libel and Complaint of American Smelting & Refining Company, et al.

Claimant	Amount of Damages
Duesberg-Bosson Machines Textiles S. P. R. L.	$ 5,000.00
Charles Censor	50.00
Garnindustrie G. M. B. H.	7,850.00
A/S. Dansk Kodekstrakt Co. Aabenraa	10,000.00
Andels-Svineslagteriet i Kolding	58,500.00
United Nations	550.00
Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) Co-partners d/b/u the firm name and style of Blake & Boyle.	550.00
	$2,903,126.00

(2761)

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Black Diamond Steamship Corp., respondent (sued herein as Black Diamond Steamship Corporation), to the libel of American Smelting & Refining Company, et al., in an alleged cause of contract and non-delivery of cargo, civil and maritime, alleges upon information and belief:

First: Respondent denies knowledge or information

sufficient to form a belief as to the allegations contained in the First article of the libel.

Second: Respondent admits the allegations as to it contained in the Second article of the libel.

Third: Respondent admits that at the times referred to in the libel it was charterer of the motor ship "Black Gull," a general ship engaged in the carriage of merchandise on the high seas for hire between northern European ports and United States Atlantic ports, under a time charter dated September 3, 1949 between respondent, as charterer, and Skibs A/S Jolund, as owner, for the exact terms and provisions of which said time charter respondent respectfully refers to the original thereof, and except as so admitted respondent denies the remaining allegations in the Third article of the libel.

Fourth: Respondent admits that in June and July 1952 certain shippers whose names are set out in Schedule B attached to the libel herein delivered to said motor ship "Black Gull" at the ports of shipment mentioned in said schedule certain goods, or packages said to contain goods, contents and conditions of contents being unknown to respondent, and that respondent thereupon duly issued and delivered to said shippers bills of lading for the transportation thereof on the said motor ship "Black Gull", and delivery thereof at (2762) the respective ports of destination set out in said schedule, in consideration of agreed freights and pursuant to the terms and provisions of said bills of lading, which said bills of lading were signed on behalf of the master of the vessel and delivered to said shippers by agents of respondent, and

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

except as herein admitted respondent denies the remaining allegations of the Fourth article of the libel.

Fifth: Respondent admits that said shipments were placed on board the motor ship "Black Gull" at its expense and under the supervision of the master of the vessel; that thereafter having the said shipments on board, said vessel sailed from her last port of loading, and thereafter arrived at the Port of New York in tow, having become a total loss by reason of a fire which occurred while the vessel was at sea on July 18, 1952; and that as a consequence of said fire many of said shipments were not delivered at all, or were delivered damaged, and subject to liens and expenses because of loss or damage which resulted from said fire; except as herein admitted respondent denies the remaining allegations of the Fifth article of the libel.

Sixth: Respondent denies knowledge or information sufficient to form a belief as to the allegations of the Sixth article of the libel.

Seventh: Respondent denies on information and belief the allegations of the Seventh article of the libel.

Eighth: Respondent denies each and every allegation of the Eighth article of the libel, except that respondent admits that no part of the sum of $2,903,126 has been paid by it.

Ninth: Respondent admits the admiralty and maritime jurisdiction of the United States and of this Honorable

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Court, (2763) but it denies the remaining allegations of the Ninth article of the libel.

Tenth: Respondent denies each and every other allegation of the libel not herein admitted or otherwise answered.

FURTHER ANSWERING, AND AS A FIRST SEPARATE AND COMPLETE DEFENSE, RESPONDENT ALLEGES:

Eleventh: All of the shipments referred to in the libel and the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, each of which said bills of lading contained, amongst others, the following provision:

> "Neither the carrier nor any corporation owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time, and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect."

Twelfth: Any alleged loss of or damage to any of the said shipments which occurred while they were in the custody of the motor ship "Black Gull" or of respondent, were occasioned by reason or by means of a fire on board said vessel, and neither respondent nor the said vessel has any liability to libellants for such loss or damage.

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

FURTHER ANSWERING AND AS A SECOND SEPARATE AND COMPLETE DEFENSE, RESPONDENT ALLEGES:

Thirteenth: All of the shipments referred to in the libel herein and in the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, each of which said bills of lading contained among others the following provision:

> "This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any (2764) of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this bill of lading be repugnant to said Act to any extent such terms shall be void to that extent, but no further."

Fourteenth: Said Carriage of Goods by Sea Act, Section 4 thereof, among other provisions provides:

> "(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from (a) Act, neglect, or default of the master, pilot or the servants of the carrier in the navigation or in the management of the ship; (b) Fire, unless caused by the actual fault or privity of the carrier; (c) Perils, dangers, and accidents of the sea or other navigable waters; (d) Act of God; . . . (p) Latent defects not discoverable by due diligence; and (q) Any other cause arising without

the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier, nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage."

Fifteenth: Any alleged loss of or damage to any of the said shipments which occurred while in the custody of respondent or the motor ship "Black Gull" arose or resulted from one or more of the matters or exceptions set forth in the foregoing articles Thirteenth and Fourteenth hereof, and neither respondent nor the said vessel has any liability to libellants for such loss or damage.

FURTHER ANSWERING AND AS A THIRD SEPARATE AND PARTIAL DEFENSE, RESPONDENT ALLEGES:

Sixteenth: All of the shipments mentioned and described in the libel herein and in the schedules annexed thereto were made subject to the provisions of certain bills of lading issued therefor, which said bills of lading contained, among others, the following provisions:

"17. In case of any loss or damage to or in connection with goods exceeding in actual value $500, lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $500 per package, or per unit, on which bases the freight is adjusted (2765) and the

carrier's liability, if any, shall be determined on the basis of a value of $500 per package or per customary freight unit, unless the nature of the goods and a valuation of higher than $500 shall have been declared in writing by the shipper upon delivery to the carrier, and inserted in this bill of lading and extra freight paid if required, and in such case if the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the carrier's liability, if any, shall not exceed the declared value.

• • • •

"Valuation of goods not shipped in packages but susceptible of being so shipped, shall not be greater under this paragraph than would be the case had they been shipped in packages.

"19. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all of its terms, whether written, typed, stamped or printed are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exemption from or limitation of liability. . . ."

Seventeenth: None of the libellants herein, before shipment of the goods or packages mentioned in the libel or in the schedules annexed thereto, nor at any other time, declared the value of the goods so delivered by them for

transportation and carriage as in the libel mentioned, nor was any such value inserted in the bill of lading or bills of lading issued for such shipments.

Eighteenth: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel herein, the value of the shipments of goods alleged in the libel so claimed to have been damaged or undelivered should be restricted and limited in accordance with the provisions of the respective bills of lading issued therefor, and to not exceeding the sum of $500 per package, or per customary freight unit.

FURTHER ANSWERING AND AS A FOURTH SEPARATE AND DISTINCT DEFENSE, RESPONDENT ALLEGES:

Nineteenth: In and by virtue of Articles I and X of (2766) the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of the Owners of Seagoing Vessels, in effect June 2, 1931, signed at Brussels, Belgium, August 25, 1924, it is provided as follows:

> "Article I. The liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight and the accessories of the vessel, in respect of
>
> • • • •
>
> "(2) Compensation due by reason of damage caused either to cargo delivered to the master to be transported, or to any goods and property on board;

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

"(3) Obligations arising out of bills of lading;

"(4) Compensation due by reason of a fault of navigation committed in the execution of a contract."

* * * *

"Article X. Where a person who operates the vessel without owning it, or the principal charterer is liable under one of the heads enumerated in Article 1 or Article 7, the provisions of this Convention are applicable to him."

Twentieth: The motor ship "Black Gull" mentioned in the libel herein was, at the times stated in said libel, of Norwegian registry and owned by citizens and residents of the Kingdom of Norway.

Twenty-first: On July 18th, 1952, said motor ship "Black Gull" became a total loss as a result of a fire on the high seas, which said fire was not caused or contributed to by the fault, privity or neglect of said owner or of respondent, its agents or servants.

Twenty-second: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel, then respondent further prays that its liability be restricted and limited in accordance with the provisions of said International Convention (said Article I and X as hereinabove set forth).

FOR A FIFTH SEPARATE AND DISTINCT DEFENSE RESPONDENT ALLEGES:

Twenty-third: In and by virtue of Section 183 of Title 46 of the United States Code, and the Acts amendatory

(2767) thereof and supplemental thereto, it is provided as follows:

> "Section 183. Amount of Liability: Loss of life or bodily injury; Privity imputed to owner; 'Seagoing Vessel'.
>
> "(a) The liability of the owner of any vessel whether American or foreign for any . . . loss or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in Sub-section (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. . . ."

Twenty-fourth: The motor ship "Black Gull" mentioned in the libel herein was, at the times stated in said libel, of Norwegian registry and owned by citizens and residents of the Kingdom of Norway.

Twenty-fifth: On July 18th, 1952, said motor ship "Black Gull" became a total loss as a result of a fire on the high seas, which said fire was not caused or contributed to by the fault, privity or neglect of said owner or of respondent, its agents or servants.

Twenty-sixth: In the event that any liability is adjudged against respondent by reason of the matters and things alleged in the libel, the respondent further prays

that its said liability be restricted and limited in accordance with said Section 183 of the United States Code as hereinabove set forth.

FURTHER ANSWERING AND AS A SIXTH SEPARATE AND DISTINCT DEFENSE RESPONDENT ALLEGES:

Twenty-seventh: On or about September 3, 1949, respondent chartered from the owner, Skibs A/S Jolund, the vessel M/S "Black Gull", as time charterer, for the transportation of freight between northern European ports and United States Atlantic ports.

(2768)

Twenty-eighth: In and by virtue of said time charter party it was provided as follows:

> "1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew, shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.
>
> "8. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

"24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled 'An Act relating to Navigation of Vessels, etc.' in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

"U. S. A. Clause Paramount

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

• • • •

"26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account."

Answer of Black Diamond Steamship Corp., Respondent (Sued Herein as Black Diamond Steamship Corporation), to the Libel of American Smelting & Refining Company, et al.

Twenty-ninth: If there is any liability by reason of the matters and things mentioned and described in the (2769) libel herein said liability is that of said Skibs A/S Jolund, pursuant to the terms and provisions of said charter party and all such liability should be borne by said Skibs A/S Jolund and not by this respondent.

Thirtieth: All and singular the premises are true.

Wherefore, respondent prays that the libel herein be dismissed with costs.

Pyne, Lynch & Smith
Proctors for Respondent
116 John Street
New York 38, N. Y.

(Verified December 30, 1953.)

Docket Entries in Verbeeck, et al.

(N)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Ad. 178-380

MARIA ANGELINA VERBEECK, MAURICE VERBEECK, SIMONE VERBEECK and LEO VERBEECK

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

DATE	
July 17-53	Filed Libel & stip. for costs ($100. Indemnity Insur. Co. of N. A.)
July 17-53	Issued citation ret. 7/28/53.
July 21-53	Filed citation & return, served defts 7-20-53.
July 31-53	" notice of appearance.
July 3-53	" stip. for respondent's costs ($100. Natl. Surety Corp.)
June 25-54	" notice of motion on exceptions Ret. 6/29/54.
July 27-54	Memo. endorsed on notice of motion filed 6/25/54. Exceptions overruled. Bicks J.
July 30 54	Filed interrogatories (Also in A178-342, A178-370, & 173-350).
Aug. 4-54	" notice of motion to reargue motion on exceptions. Ret. 8/10/54.
Aug. 5-54	" order overruling exceptions. Bicks, J.
Sep. 14-54	Memo. endorsed on notice of motion filed 8-4-54. Respectfully referred to Judge Bicks, Edelstein, J.

Docket Entries in Verbeeck, et al.

DATE	
Nov. 22-54	Filed stip. and order substituting Dow & Symmers in place of Pyne Lynch & Smith as proctors for Black Diamond SS Corp, Clerk. (Filed under A 173-350)
(O)	
Dec. 8-54	Memo. endorsed on exceptions to libel filed 6/25/54. Motion for reargument granted, original determination is adhered to. Bicks, J.
Dec. 20-54	Filed order granting motion for re-argument of exceptions, etc.; that respondents file their answers to libel. Bicks, J.
Jan. 5-55	" notice of motion re: order requiring libellants to further answer the propounded interrogs. Ret. 1/11/55. (Also in A178-342, A178-370 and A173-350).
Jan 17 1955	Special pre-trial before Knox, Ch. J. Hearing held & adjd to 1/31/55.
Jan. 25-55	Memo. end. on motion papers filed 1/5/55. Motion disposed of as indicated upon argument. Submit order. Bicks, J. (Also in A178-342, A178-370 and A173-350).
Jan 31 1955	On call of special pre-trial before Knox, Ch. J. Hearing adjd to 2/14/55.
Feb 14 1955	On call of special pre-trial before Knox, Ch. J. Hearing adjd to 3/17/55.
Mar. 8-55	Filed consent & order sustaining exceptions to respt's answers or failure to answer certain respt's. interrogs.; that liblts. answer respt's. interrogs. within ten days, etc., etc., Bicks, J. (Filed under A178-342).

Docket Entries in Verbeek, et al.

DATE		
Mar 17 1955	Special pre-trial before Knox, Ch. J. Hearing held. Case marked off Pre-trial Calendars.	
May 13-55	Filed	answer of Black Diamond Steamship Corp.
May 26-55	"	note of issue for trial.
Sep 1 1955	Filed	notice of non-readiness for trial
Sep 1 1955	Filed	notice of non-readiness for trial
Dec. 23-55	"	order that commission issue to Rotterdam, Kingdom of The Netherlands. Walsh, J. (Filed in A178-342).
Dec. 29-55	"	notice of motion to revoke calendar dispositions etc. Memo. endorsed. Motion granted as indicated. Weinfeld, J. (Filed in A 174-34)
Dec. 29-55	"	affidavit and order revoking calendar dispositions etc. Weinfeld J. (Filed in A 174-34)
Dec. 29-55	"	affidavit of Daniel L. Stonebridge. (Filed in A174-34)
Jan. 12-56	"	direct interrogs. propounded to Johannes Adrianus Driesprong. (Filed in A178-342).
Jan. 12-56	"	direct interrogs. propounded to Pieter Spaanderman. (Filed in A178-342)
Feb. 6-56	Before Dimock, J. Trial begun. (Consolidated for trial with A174-34, A178-342, A178-370).	
Feb. 7-56	Trial continued.	
Feb. 8-56	" "	Libelant and Passenger claimant rest.

(P)

Feb. 9th, 14th, 15th, 16th, 17th, 21st, 23rd, 24th and 27th. Trial continued.

Docket Entries in Verbreck, et al.

DATE		
Feb. 28-56	Trial concluded. Decision reserved.	
Mar. 22-56	Filed	Record of Proceedings of Feb. 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956. (Filed in A178-342).
May 16-56	Filed	Opinion #22617. Dimock, J. Petition for exoneration granted and libelants recovery denied. (Filed in A174-34).
May 25-56	"	notice of motion re: to strike and delete as indicated. Ret. 5/29/56. (Filed in A174-34) and in 3 other cases.
July 18-56	"	amended memorandum (Opinion #22,-813) Dimock, J. (Filed in A 174-34)
July 23-56	"	second amended memorandum (Opinion #22,829) Dimock, J. (Filed in A 174-34)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 178-370)
July 27-56	"	proposed findings of fact and conclusions of law with notations on the margins by Judge Dimock. (Filed in A 174-34)
Oct. 4-56	"	consent order for findings of fact and conclusions of law. Dimock, J. (Filed in A.174-34 Also in A178-342, A.178-370)
Nov. 28-56	Filed	bill of costs and final decree. Libel dismissed and resps. to recover sum of $34. costs taxed. Dimock, J.

(2908)

Libel and Complaint of Maria Angelina Verbeeck, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The Libel and Complaint of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck—against—Black Diamond Steamship Corporation and Black Diamond Lines, Inc., in a cause of death on the high seas, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: At all the times hereinafter mentioned, libellants were, and they now are, subjects of the Kingdom of Belgium, residing at Boechout, Antwerp, Belgium. Claimant Maria Angelina Verbeeck is the surviving widow of Joseph Antony Verbeeck, deceased, and claimants Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck are surviving children of said decedent. Decedent Joseph Antony Verbeeck left surviving him, no wife, husband, parent, child, or other dependent relative excepting the libellants hereinabove claimed.

Second: At all said times, respondents Black Diamond Steamship Corporation and Black Diamond Lines, Inc. were, and they now are, corporations duly organized, created and existing according to law, with an office and place of business at No. 39 Broadway, City, County and State of New York, within this District.

Third: At all said times respondents were the charterers of the steamship "Black Gull", which at all said times was operated in their service between the ports of

Bremen, Hamburg, Rotterdam, Antwerp, Belgium and the ports of New York, Boston and Philadelphia.

(2909)

Fourth: On July 18, 1952, decedent Joseph Antony Verbeeck was a member of the crew of the M. S. "Black Gull" serving aboard her in the capacity of mess boy. On that date, a fire broke out on board said M. S. "Black Gull" on the high seas, and as a result of said fire, decedent Joseph Antony Verbeeck lost his life. The said fire resulted from the willful and gross negligence of respondents, among others, in that they caused or permitted the said steamship to be, or to become an unsafe place for said decedent to work, and in that they failed to exercise due care to maintain said steamship in a safe condition.

Fifth: Said fire and the consequent death of decedent Joseph Antony Verbeeck were not in any degree caused by any fault, neglect or want of care of decedent or of libellants, but were caused by the wrongful acts, neglect and default and by the willful and gross negligence of respondents, their agents and servants, among others.

Sixth: At all times herein mentioned it was, and it now is the law of the Kingdom of Norway, that an action is maintainable against any corporation which by wrongful acts, neglect, or default, shall have caused the death of any person. By the said law of the Kingdom of Norway, such action may be brought by, and for the benefit of, the spouse and children of the person whose death shall have been caused, and shall be brought by them. A copy of a translation of the pertinent provisions of said law, which is known as "An Act concerning the entry into force of the General Civil Penal Code", is annexed hereto, marked Exhibit "A", and made a part hereof. The said act was, at all the times mentioned in this claim, and still is, in

force in the Kingdom of Norway, and extended and still extends in its operation to all deaths occurring on or caused by Norwegian vessels on the high seas.

(2910)

At all the times mentioned in this libel, it was, and now is, the law of the United States of America, that "whenever a right of action is granted by the law of any foreign state, on account of death by wrongful act, negligence or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the Courts of the United States, without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding". (Title 46 U. S. C., Section 764)

Seventh: The M. S. "Black Gull" was a vessel of Norwegian registry.

Eighth: By reason of the death of said decedent caused as aforesaid, libellants have been deprived of the reasonable expectation of pecuniary benefit and have suffered and sustained damage in the sum of $22,500., as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

Ninth: All and singular the premises are true within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, libellants pray:

1. That process in due form of law, according to the course and practice of this Court in causes of Admiralty and Maritime jurisdiction, may issue against the said respondents, Black Diamond Steamship Corporation and

Black Diamond Lines, Inc. citing them to appear and answer on oath all and singular the matters aforesaid.

2. That the Court will order, adjudge and decree that the said respondents pay to the libellants the damages (2911) suffered by each of them, together with interest thereon, and their costs and disbursements.

3. And that libellants have such other and further relief in the premises as in law and justice they may be entitled to receive.

Bigham, Englar, Jones & Houston
Proctors for Libellants
Office & P. O. Address
99 John Street
New York 38, N. Y.

(Verified July 16, 1953.)

(2912)

EXHIBIT A, ANNEXED TO LIBEL AND COMPLAINT OF MARIA ANGELINA VERBEECK, ET AL.

Translation from Norwegian.

Certain provisions concerning damages included in the Norwegian Act of May 22, 1902, No. 11, known as the "Act concerning the Entry into Force of the General Civil Penal Code".

Section 19.

If any person has caused any injury to the body or limbs or to the health of another, or if he has infringed his personal liberty, and if the wrongdoer is liable in damages according to any other principles of law, he shall—besides indemnifying the injured party for the injury which he has suffered—also compensate him for any impairment of his future earning capacity, to such extent as the Court may consider to be fair and reasonable having regard to the degree of negligence and any other circumstances involved.

If the act concerned has been committed wilfully or by gross negligence, the Court may also order the wrongoer to pay to the injured party such amount of money as may be considered fair and reasonable, by way of compensation for personal pain and suffering or for any other injury of a non-economic nature which has been caused by the act concerned.

The provisions of the first and second paragraphs of this section shall also apply to any person who has committed an offence according to sections 168, 169, 191-196, 201, 210, or 217-221 of the Penal Code.

Exhibit A, Annexed to Libel and Complaint of Maria Angelina Verbeeck, et al.

Section 20.

In the event that the act concerned has caused the death of another person, the person who is liable in damages shall pay to the person responsible for the burial the costs incurred thereby.

Section 21.

If, in consequence of the death which has been caused any person is deprived of his supporter, the person who is (2913) liable in damages shall be ordered to indemnify the dependent for the loss which he is considered to suffer as a result thereof, to such extent as is held by the Court to be just and reasonable having regard to the degree of negligence and any other circumstances involved.

If the death has been caused wilfully or by gross negligence, the Court may also award the spouse, children or parents of the person killed such compensation as provided in the second paragraph of section 19.

Section 28.

The right to recover damages shall lapse after a period of 3 years; provided, however, that the period—if the claim has resulted from a punishable offence—shall be 10 years from the date when the person wronged became aware of the injury and of the identity of the person responsible for it.

If the claim for damages has resulted from a punishable offence, the claim is in any event recoverable in connection with any criminal proceedings in which the

wrongdoer is sentenced. If no decision is made by the Court with regard to a claim for damages submitted during the criminal proceedings, the provisions of the second paragraph of section 12 of the Statute of Limitations of July 27, 1896, shall apply.

The right of seizure according to section 36 of the Penal Code is not subject to prescription.

Correct translation certified.
Oslo, January 5, 1953.

(signed) J. Wulfsberg
J. Wulfsberg
(Authorized translator)

SEAL

(2934)

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

To the Honorable the Judges of the United States District Court for the Southern District of New York.

The Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck against Black Diamond Steamship Corp. and Black Diamond Lines, Inc., in a cause of death on the high seas, alleges and respectfully shows to this Honorable Court, upon information and belief, as follows:

First: Denies information sufficient to form a belief as to the allegations contained in Article First of the Libel.

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

Second: Admits the allegations contained in Article Second of the Libel so far as they apply to Black Diamond Steamship Corp. only.

Third: Admits the allegations contained in Article Third of the Libel.

Fourth: Denies each and every allegation contained in Article Fourth of the Libel, except, admits that on July 18, 1952, Joseph Anthony Verbeeck was a member of the crew of the M/S "Black Gull" and that a fire broke out on board on the high seas as a result of which fire decedent Joseph Anthony Verbeeck lost his life.

Fifth: Denies each and every allegation contained in Article Fifth of the Libel.

Sixth: Denies information sufficient to form a belief as to the allegations of Article Sixth of the Libel.

Seventh: Admits the allegations contained in Article Seventh of the Libel.

(2935)

Eighth: Denies the allegations contained in Article Eighth of the Libel.

Ninth: Denies each and every allegation contained in Article Ninth of the Libel, except, admits the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Answer of Black Diamond Steamship Corp. to the Libel and Complaint of Maria Angelina Verbeeck, et al.

As and for a First, Separate and Complete Defense

Tenth: Alleges, upon information and belief, that libellants have received full and complete compensation allowed seamen's dependents under Norwegian law from the appropriate compensation agency.

As and for a Second, Separate and Complete Defense

Eleventh: Upon information and belief, whatever injuries and damages were sustained by libellants, if there were any, were caused in whole or in part or were contributed to by reason of the carelessness, negligence and want of care on the part of the deceased, Joseph Anthony Verbeeck, and not through any carelessness, negligence or want of care on the part of respondent, its agents, servants or employees; and, if any carelessness, negligence or want of care other than that of the deceased, Joseph Anthony Verbeeck, caused or contributed to the said alleged injuries and damages, it was the carelessness, negligence and want of care on the part of some third person, firm or corporation, their agents, servants or employees over whom respondent had no control, for whose carelessness, negligence and want of care the respondent, its agents, servants or employees is not and was not responsible.

(2936)

Wherefore, respondent prays that the libel and complaint be dismissed with costs.

Dow & Symmers
Proctors for Respondent
70 Pine Street
New York 5, New York

(Verified May 12, 1955.)

Testimony

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 174-34

In the Matter

of the

Petition of SKIBS A/S JOLUND, in a cause of exoneration from and limitation of liability for damages arising out of a fire on board the "Black Gull" on July 18, 1952.

A. 178-370

WURTTEMBERGISCHE UND BADISCHE VEREINIGTE VERICHERUNGS-GESELLSCHAFTEN A. G.

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES INC.

A. 178-342

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & CO., ANGLO FABRICS COMPANY, et al.,

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

A. 178-380

MARIA ANGELINA VERBEECK, MAURICE VERBEECK, SIMONE VERBEECK and LEE VERBEECK.

vs.

BLACK DIAMOND STEAMSHIP CORPORATION and BLACK DIAMOND LINES, INC.

Appearances

Before: Hon. Edward J. Dimock, *District Judge.*

(2) • • •

Appearances:

Pyne, Brush, Smith & Michelsen, Esq.,
Proctors for Skibs A/S Jolund;
Warner Pyne, Esq., and
Dudley C. Smith, Esq., of Counsel.

Bigham, Englar, Jones & Houston, Esqs.,
Proctors for libelants, cargo claimants and death claimant;
Henry N. Longley, Esq., and
John W. R. Zisgen, Esq., of Counsel.

Thomas H. Walker, Esq.,
Proctor for Claimant;
William J. O'Brien, Esq., of Counsel.

Abberley, Kooiman & Amon, Esqs.,
Proctors for seven passengers;
John J. Abberley, Esq., and
Frank Marcellino, Esq., of Counsel.

Dow & Symmers, Esqs.,
Proctors for Black Diamond Steamship Corp.;
Daniel W. Stonebridge, Esq., and
Raymond W. Mitchell, Esq., of Counsel.

Barron, Rice & Rockmore, Esqs.,
Proctors for Werner S. Brunn, claimant;
Jerome L. Reinstein, Esq., of Counsel.

• • • •

(47) • • •

HUBERT HOLLAAR, called as a witness on behalf of the libelants, having been first duly sworn, testified as follows:

Direct examination by Mr. Zisgen:

(48)

Q. Where do you live, Captain? A. In Rotterdam, in the Netherlands.

Q. You are a Dutch National, are you not? A. I am.

Q. And you have come here just for this trial? A. I do.

Q. By whom are you employed? A. By the Black Diamond Steamship Corporation of New York.

Q. How long have you been in their employ, Captain? A. Since September, 1930, with the interruption of the war years when connections were severe between the U. S. and Netherlands.

Q. When you were first employed by Black Diamond Steamship Corporation what was your position? A. I was port captain in the Port of Rotterdam.

Q. And did you thereafter acquire a different position? A. I did.

Q. And when was that? A. I couldn't exactly state but within about two years after I come into the employ of Black Diamond Lines I became marine superintendent, European marine superintendent covering their other port, which at that time was Antwerp, Belgium, only.

(49)

Q. Are you still their European marine superintendent? A. I am.

Q. And were you in June and July of 1952? A. I was.

Q. As of June and July, 1952, what European ports were under your supervision as European marine superintendent? A. That was the ports of Hamburg, Bremen, Rotterdam and Antwerp.

Q. And as of that time, Captain, what in general was the business of Black Diamond Steamship Corporation? A. The Black Diamond was maintaining a regular liner service, carrying cargo and a limited number of passengers on their vessels from these European ports mentioned to the east coast ports in the United States: Boston, New York, Philadelphia, Baltimore and Norfolk.

Q. And how frequently did Black Diamond Lines in June and July 1952 offer sailings from European ports? A. It was a weekly service.

Q. That is, one ship a week? A. One ship a week.

Q. And how long had that been true prior to (50) July in 1952? A. I cannot recall exactly because we have had various changes in our schedule, but I should say it would be about since 1949 when we acquired the Norwegian flag vessels to operate our service.

Q. And did those Norwegian flag vessels include the Black Gull? A. It did.

Q. And then from 1949 until July 1952 she was operated in that service, was she not? A. Well, I am not entirely clear on this point because the Black Gull was a new ship acquired by Messrs. Herlofsen of Oslo, and I really don't recall exactly the date when the vessel made her maiden trip.

Q. Well, was it sometime prior to 1951, Captain? A. In any case.

Q. Now, as European marine superintendent, what were your duties generally? A. My duties in general were to aid my shippers, our agents, our masters and officers of the vessel in an efficient operation of the line, and complying with the wishes of the shippers with regard to the destinations of their cargoes; to see that these cargoes were given the proper care and attention (51) with regard to the agents.

I did more or less act as arbitrator, you might say, between those different agents whenever problems arose as

to space available or dead weight available on the ships, in order to see that each and every agent got a fair deal as far as the maintenance of the schedule is concerned, so that the vessels would call at their ports as closely to the advertised dates as circumstances would permit.

That, in general, I would say describes what my duties are.

Q. Now, getting down from the general to the specific, Captain Hollaar, and dealing particularly with the westbound voyages, when did you first step into the picture with respect to any intended westbound voyage? A. From the time that the vessel in its schedule approached the port of Hamburg, which was our first loading port, I was given information by the various agents as to the advance bookings of cargo then on their books in all the ports, and it was our practice, prior to departure from Rotterdam, to inform the masters of the vessels in writing, amongst others, of any cargoes of a special nature that the (52) vessel might have or would have to load on her westbound voyage, and consequently it follows that at that time when there was any specific reason to talk points over with the captain, such was then done prior to his departure from the German ports.

Q. You said "it was our custom," Captain. By that what do you mean? A. Well, when I say "our" I probably refer to the company as a whole.

Q. Were you or were you not referring to yourself when you said it was your custom? A. Yes, I certainly was involved in this "our."

Q. Now, when you said prior to the vessel's departure from Rotterdam— A. Yes.

Q. —you meant, did you not, her departure from Rotterdam after discharging eastbound cargo? A. At Rotterdam, yes.

Q. Now, having talked over with the master whatever

you felt had to be talked over with him at Rotterdam, what next did you do? A. The next thing for me would be to inform the agents in the port of Hamburg, and subsequently in the port of Bremen, as to the proposed stowage of (53) bookings which they wanted to ship. There was always this, in a regular liner service, those bookings change, sometimes change by the hour, so the time consumed by the ship in transit between the ports of Rotterdam and Hamburg in the meantime, there might still be changes and therefore we exchanged the latest information either by teletype or by telephone—sometimes by letter if there was time to do so—and then a proposal of stowage was given by me to the agents in the German ports, with the instructions for their representative who boarded the ship to discuss this with the master, and of course get his approval or eventually his refusal to do this or that.

Q. Can you keep your voice up just a little bit, Captain? A. I will try to.

Q. Now, after the completion of loading at the two German ports, by which you meant Hamburg and Bremen—did you not? A. Yes, I did.

Q. —where ordinarily did the vessels of the Black Diamond liner service proceed? A. From the Port of Bremen to the Port of Antwerp.

Q. And at Antwerp were you usually present when (54) the vessel was loaded? A. I was.

Q. Were you present there when the Black Gull loaded at the end of June or the beginning of July, 1952? A. I was.

Q. Now, what did you do at Antwerp with respect to the loading of the Black Gull for the voyage for which she was there at that time? A. At the Port of Antwerp it was the established custom to make out a tentative stowage plan, to present this to the master again for ap-

proval, and to proceed loading according to such a plan or eventually an amended plan.

In this plan were also then incorporated the latest informations received from the Port of Rotterdam where loading would subsequently be continued.

Q. Who prepared the tentative loading plan for the Black Gull at Antwerp in June or July, 1952, Captain Hollaar? A. That was the result of the discussion, the primary discussion between the stevedores and myself, afterwards then handed in to the master.

Q. You were appointed by the New York office of the Black Diamond Steamship Corporation, were you not? (55) A. I was.

Q. Were you answerable to the agents of Black Diamond Steamship Corporation at Antwerp or at Rotterdam? A. Answerable in what respect, please?

Q. Were they in a position under the corporate set-up of Black Diamond Steamship Corporation to give you orders or instructions? A. No, sir, not in that sense they couldn't give me orders or instructions.

Q. Who was your superior in the Black Diamond Steamship Corporation? A. The officers of the company in New York and the operating manager in the New York office.

Q. And who was the operating manager at that time? A. Captain M. W. Lohse.

Q. By whom were the stevedores who loaded the Black Gull employed? A. By Black Diamond Steamship Corporation; they were under contract to them.

Q. Under contract to them? A. Yes.

Q. And was that true both at Antwerp and at Rotterdam? A. It was.

Q. You said the tentative plan was prepared (56) in consultation with those stevedores.

Who, as between yourself and the stevedores, had the

final say as to where cargo should be stowed? A. The final say rested with the master, not with any one of us.

Q. That was after it was presented to the master? A. Yes.

Q. But in determining what to present to the master, Captain Hollaar, who as between you and the stevedores had the final word? A. Then I would have it.

Q. And did you have it in July 1952—A. I did.

Q. —with respect to the Black Gull? A. I did.

Q. Now, can you recall, Captain Hollaar, whether prior to the arrival of the Black Gull at Antwerp to load you had any information whether naphthalene had been booked for transportation on her? A. I did have that information.

Q. Prior to her arrival to load? A. Yes.

The Court: Arrival at what port?

Mr. Zisgen: At Antwerp, your Honor.

(57)

Q. Was that also true with respect to Rotterdam, Captain Hollaar? A. That was true, too.

Q. That is, before her arrival at Rotterdam you knew she was to lift naphthalene? A. Yes, sir.

Q. On the tentative plan which was prepared for presentation to the master at Antwerp, was there shown where the naphthalene to be lifted at Antwerp was to be stowed? A. It was.

(58)

Q. And that plan you saw? A. I did.

Q. Did you personally present it to the master? A. I do not recall; I do not recall.

Q. In any event, you knew it would be presented to the master? A. Yes.

Q. And was that prior to the commencement of loading? A. Yes.

Q. Did that tentative plan or did it not show that the naphthalene to be lifted at Antwerp was to be loaded on deck? A. Yes, it did.

Q. Did it show whether the naphthalene stowed on deck was to be covered? A. It did not.

Q. Did you know prior to the loading of the naphthalene whether or not it would be covered when loaded? A. It would not be covered.

Q. You knew that. A. Yes.

Q. Now dealing with Rotterdam, was the situation (59) the same there? A. Yes, the very same.

Q. That is, the tentative plans showed that naphthalene would be stowed on deck? A. It did.

Q. And you knew before the naphthalene was loaded that it would not be covered? A. I did.

Q. And the tentative plan for loading at Rotterdam was presented to the master by you? A. By my assistant, most likely.

Q. You knew, however, that it would be presented to the master? A. I did.

Q. Didn't you see the naphthalene in fact stowed on deck, Captain Hollaar, at Antwerp? A. I did, sir.

Q. How about at Rotterdam? A. Also, sir.

Q. And you saw that it was not covered at either port? A. I did.

Q. Can you tell me what you can recall about the way in which it was stowed, that is, the height, (60) the length and breadth of that stow? A. Approximately, sir. I could do that. We will say that the height was in the neighborhood of 6 feet, and the width ~~in thwartship~~ direction would be about 13 feet, and then all along the length of the weather deck.

Q. And approximately what is that length, Captain?

A. The length of the weather deck approaches about between 90 and 100 feet aft, and the same thing forward.

Q. And was that whole 90 feet or so covered with bagged naphthalene? A. Eventually, yes.

Q. That is, taking the two ports— A. Together.

Q. —of Antwerp and Rotterdam together? A. Yes.

Q. Now was that stowed on both sides of the hatch, Captain, in the same fashion? A. Yes, it was.

Q. So that both on the port and the starboard sides we have 6 feet high by 13 feet in width by 90 or more feet in length? (61) A. Yes, we had.

Q. And then it was stowed right out to the bulwarks of the ship, was it not? A. Not exactly right out to the bulwarks. We had the habit of erecting a wooden—you might call it—a fence on the so-called railing stanchions, so that the bags of naphthalene would not come in the space between the railing stanchions and the steel plates of the railing, and in that way providing for a runway for the water that might be shipped, to reach the scuppers.

Q. I take it the distances from the bulwarks into the outermost bags of the stow were not very great, Captain? A. No, if I must estimate here I would say about a foot, or a foot and a half at the most.

Q. And in that space you had this fence, as you call it? A. Yes, yes.

Q. That was of wood, I take it? A. Of wood, of dunnage wood, yes.

Q. Now along the hatch coaming, Captain, were the bags stowed right up against the hatch coamings on either side? A. No, there was a runway provided for the crew (62) and for stevedores, longshoremen, to move back and forth along the hatch coamings.

Q. And approximately how wide was that in a thwartship direction? A. About three feet.

Q. And except for that you had from the outermost edge of the three-foot passageway a solid stow of bags

out to a foot or eighteen inches from the side of the ship? A. Yes.

Q. And 6 feet high? A. And 6 feet high, about.

Q. And in that stow the bags were simply loaded in place, one on top of the other, were they not? A. Yes; yes, more or less, with the exception that at the ends of the stow where we crisscrossed the bags to get a more tight front, so the rest of them was laid in a fore and aft direction. That is the usual way we did.

Q. But there was nothing separating the tiers? A. No.

Q. And that stow was held in place by what, Captain? (63) A. By nets, rope nets, which we used for that purpose.

Q. And how were those rope nets arranged to fulfill their function? A. These rope nets were laid on the deck. They had tail ends of manila rope on one side, allowing to tie these to railing stanchions and other available fixed points, and the sides of the vessel—ringbolts on deck or anything that presented itself in that line, and then in such a manner that for approximately about two to three feet, I would say, those nets were covered by the stow of the bags of naphthalene.

The rest of the slack of the net was then temporarily heaped up along the stow, and when it came to securing, it was folded back over—up and over the stow of naphthalene towards the railing.

These nets are provided, and were in this case provided with rings, steel rings, spliced into the nets through which a runner or steel wire or rope could be reefed so that you could tighten up on that stow.

Q. In effect you tucked one end in— A. In, yes.

Q. —under the bags, is that right? (64) A. Yes, sir.

Q. And you fastened the other end to a part of the ship? A. Yes, but do not forget that the tucked-in end was held in place by these tail ends of manila rope which were

fastened to the railing. It was not a method that you could pull the net from under the stow, like a bed-sheet.

Q. Now as of June and July, 1952, Captain Hollaar, what did you know of the characteristics of naphthalene in bags? A. I knew that naphthalene was classed as a hazardous cargo.

I knew, amongst others, that the flashpoint of naphthalene was around 78 to 80 degrees Centigrade, and I knew that naphthalene gave off obnoxious odors and that that was one of the reasons why we insisted on carrying this cargo on deck instead of under deck, in order to protect other cargo which of necessity would have to fill out the under-deck cargo spaces.

Q. This naphthalene was in bags, was it not? A. It was.

Q. What kind of bags were they? A. They are jute burlap bags of tight and woven (65) cloth.

Q. You mentioned the odor which emanated from the bags of naphthalene. A. Yes.

Q. What did you know of the qualities of that odor? A. Well, that I knew indicated that there was a certain percentage of volatile, you might call it, gas or whatever you want to call it, in the naphthalene, and that the escape of that caused this odor.

Q. What did you know of the quality of inflammability or lack of it, of that gas? A. Well, I knew the gas was not very inflammable, although—if at all, although a combination of this gas in a certain percentage mixed with air could form an explosive mixture. That might perhaps not be aggravated if dust particles of this naphthalene should be suspended in air in closed spaces.

Q. Did you know anything about the flashpoint of naphthalene in July, 1952? A. I mentioned to you it was 78 to 80 degrees Centigrade.

Q. You did—you are quite right. What did you know of the flashpoint of the (66) gas? A. Of the flashpoint of the gas, I did not know that in 1951, but I knew it

wasn't very close because it was only classed as hazardous cargo not as dangerous cargo.

Q. You said "1951," Captain. Did you mean "1952"? A. Oh, 1952, yes.

Q. July, 1952. A. Let us pin it down to the time of the accident, yes.

Q. All right. What effort had you made at that time, Captain, to obtain information about naphthalene? A. I had read up on it in various handbooks. I had gone through exams for my licenses, and during those examinations questions on dangerous cargo—it is habitual to ask those of the candidates so that in order to pass an examination you have to prepare yourself before appearing before the examiners.

I had visited a naphthalene-producing factory—well, I must say that in Dutch because it is the proper name of the factory—Teerbedryf, and then Uithoorn, and there I had learned from the management (67) something about naphthalene, too.

Q. Had you done anything else to obtain information about naphthalene at that time? A. No, sir. That exhausts about what I did.

Q. Had you consulted any of the commentaries on dangerous goods? A. Of course I have. That is what I mentioned, handbooks on dangerous cargoes.

Q. Can you name them for me? A. Oh, yes. I had Noordreaven, Aeby's and then I have the book of the French, Marine Marchande on dangerous cargoes.

Q. Any others? A. Well, I will stop at those.

Q. Now you have mentioned Noordreaven, and you have mentioned the French book. A. Yes, sir.

Q. Those are the only ones that you had consulted? A. Oh, no, I have read more. There used to be a book, the German book on it, too—(snapping finger)—let me see how it is called—maybe I can refer to it later—that German name. It doesn't occur to me right now.

(68)

Q. You had consulted Aeby's book, you said? A. Yes, I did.

Q. I show you a book which has heretofore been marked as Libelants' Exhibit 4 for identification, Captain. Is that the book to which you refer (handing to witness)? A. Yes, sir, that is the book to which I refer.

Mr. Zisgen: That, your Honor, is Dr. Jules Aeby's book, "Dangerous Goods, Third Edition," published in 1938.

I have photostated the pages of those which I think are of importance, and to keep from having the record too voluminous, I think it might be well if my brothers approved to substitute photostats for the book itself.

The Court: May that be done with the understanding that if anybody thinks that something of importance has been omitted it may be supplied later?

Mr. Zisgen: With that understanding, I offer in evidence a photostatic copy of certain pages of the book which has heretofore been marked as Libelants' Exhibit 4 for identification.

(Marked Libelants' Exhibit 9.)

(69)

Mr. Pyne: What pages are they?

(Mr. Zisgen hands to Mr. Pyne.)

By Mr. Zisgen:

Q. Had you at that time—that is, July, 1952—consulted the United States Coast Guard Regulations, Captain Hollaar? A. I had.

Q. I show you a pamphlet entitled "Explosives or Other Dangerous Articles on Board Vessels, Regulations Prescribed by the Commandant of the Coast Guard," and ask you if that is the booklet (handing to witness)? A. It is.

Mr. Zisgen: Here again, your Honor, I have prepared photostatic copies of some portions of the Regulations, and on the same understanding as before I would like to offer the photostats in place of the book.

The Court: If there is no objection it will be done.

(Marked Libelant's Exhibit 10.)

By Mr. Zisgen:

Q. And you were familiar in July, 1952, with the requirements of the United States Coast Guard (70) Regulations as set out in this pamphlet, were you not? A. Yes, sir, I was.

Q. And you were also familiar with what is set out in the third edition of Dr. Aeby's book on Dangerous Goods? A. I was.

Q. Captain Hollaar, was there anyone in Europe, in June or July, 1952, in authority over you with respect to the preparation of tentative loading plans for westbound vessels of the Black Diamond service? A. Well, if you eliminate the master, sir, if you refer to the shore staff, there was not.

Q. There was none except the master? A. Yes.

Q. And the master of the Black Gull was not employed by Black Diamond Steamship Corporation, was he? A. No, sir.

Q. So that so far as concerns Black Diamond Steamship Corporation, there was no one in Europe in July,

1952, whose authority exceeded yours with respect to the preparation of the tentative plan of stowage? A. That's so.

(71)

Q. Now after the vessel had been loaded, Captain Hollaar, what became of the tentative loading plan? A. Well, sir, that was destroyed because that is placed by the final loading plan which is being prepared as the loading progresses.

Q. And under whose supervision was the final loading plan prepared? A. That is done by the checking department of the stevedores.

Q. The what department? A. By the checking department of the stevedores.

Q. And the stevedores at Antwerp and Rotterdam were, I think you told us under contract to Black Diamond Steamship Corporation? A. Yes, sir, they were.

Q. So that the final loading plan, then, was prepared by some department of those contracting stevedores at both ports, is that correct? A. That is correct.

Q. Was that under your general supervision? A. Well, yes, I must say it is. I glance at that plan once in a while while it is on the board, on the drawing.

(72)

Q. For what purpose? A. Just to follow up and see how far we have progressed, to see if all the things are given the right alignment and so forth, because a stowage plan is supposed to give an intelligent picture of the actual, relative position of the cargoes on board to the people on the other side of the line who have to take the cargo out, and to base their activities on what they can read from the stowage plan.

Q. Do you know what was done with the final loading plan for the Black Gull's cargo at Antwerp and at Rotter-

dam, after those final loading plans were completed? A. Yes, I do.

Q. And what was done with them? A. A certain number of these plans are distributed, amongst others, to the agent's office. Some go in the archives of the checking department of the stevedores.

A certain number of them go on board and are carried as a rule by the chief officer for ready reference and for handing out in the ports of discharge.

Another part of these plans are mailed to the United States ports of discharge at the address of (72a) the agents, so that is in general what is done with those plans.

Mr. Zisgen: Mr. Stonebridge, may I have the stowage plan of the Black Gull?

The Court: Court will recess now for lunch until 2:15.

(Recess to 2.15 p. m.)

AFTERNOON SESSION

(73)

(2:15 p. m.)

HUBERT HOLLAAR, resumed the stand.

Direct examination continued by Mr. Zisgen:

Q. Captain, I show you two documents produced by Mr. Stonebridge, which appear to have been marked Exhibits 1 and 1-A (handing to witness). Will you look at them and tell me whether together they constitute the stowage plan of the Black Gull for the voyage we have been talking about? A. They do.

Mr. Zisgen: I offer those in evidence, if your Honor please.

(Marked Libelant's Exhibits 11 and 11-A)

Q. Captain, according to the stowage plan, Exhibits 11 and 11-A, there were also stowed on deck some drums of hydrogen cyanide, were there not? A. There were, sir.

Q. And you recall that shipment, I take it? A. I do.

Q. Were you present when that shipment was stowed on board the Black Gull? A. I was, sir.

Q. Will you tell us how it was stowed? A. It was stowed on the after deck in a space (74) between the after end of the hatch coaming of No. 4 and the after deck house. The master house, I should call it, not the deck house.

Q. How was it kept in position there, Captain? A. It was secured with wire.

Q. Was it covered or uncovered? A. It was covered.

Q. And with what? A. With tarpaulin.

Q. Was that at your request or at your suggestion? A. It was at my suggestion.

Q. And why did you make that suggestion? A. Because these drums contained a liquid. Liquid is liable to expand through heat, and although it is a requirement for factories who tender shipments of those liquids for shipment to leave a certain ullage or free space in those drums it is just as well to at least try and minimize the expansion of that liquid as much as possible. So therefore we covered it.

Q. What did you view as the possible source of heat which might expand that liquid? A. Well, that is the general temperature of the air that the ship might encounter during the voyage. The temperature might very well rise slightly over the temperature which was prevailing at the time of (75) loading.

Q. And what would cause such a rise, Captain? A. Well, the cause of that rise would be the amount of sun heat that was given off to our atmosphere under certain weather conditions.

Q. And you anticipated that the covering with a tarpaulin would minimize the effects of the sun coming through the atmosphere on those drums? A. I did.

Q. Would it not be true, Captain, that a tarpaulin would have that same minimizing effect on the sun's rays over any cargo? A. It would not have the same effect, sir, because unless we deal with a liquid, if we deal with another commodity there is most likely no question of expansion.

(76)

Q. You are talking in terms of the expansion of the liquid, Captain? A. Yes.

Q. But so far as concerns the transmission of heat to the tarpaulin, taking any given tarpaulin, its effect as a preventative to the passage of heat would be the same thing no matter what cargo it was over, would it not? A. It would not necessarily. I can imagine that a tarpaulin would have an adverse influence. It might even serve to contain in a certain stow, particularly would I expect so in a stow when the cargo was contained in bags, whereas with drums there is of necessity a lot of broken stowage in between the drums, so the free circulation of air for the drums—between the drums is somewhat easier than it would be in a pile of bags.

Q. I think again, Captain, you misunderstood me. I am speaking of the effect of the tarpaulin, the top of the tarpaulin, if you like— A. Yes.

Q. —in breaking the heat ray emanating originally from the sun, which you spoke of before. A. Yes.

Q. Now isn't it a fact that any given tarpaulin of whatever construction and whatever thickness (77) it may be,

will be the same in cutting that heat ray off, no matter what cargo it is stowed over or placed over? A. I don't think so, sir. I still remain by my opinion that it all depends on what is under that tarpaulin.

Q. Then it is your view that the effect of a tarpaulin in preventing a transmission of heat from the sun differs, depending on what is underneath it? A. Yes, sir

Q. Now you knew in June and July, 1952, that the gases given off by the naphthalene at ordinary temperatures are heavier than air, did you not? A. Yes, sir.

Q. Were these bags of naphthalene on the "Black Gull" stowed directly on the steel deck, Captain Hollaar, or were they stowed on something else? A. They were stowed directly on the deck, steel deck.

Q. There was no dunnage underneath? A. There was no dunnage underneath.

Q. You had been present at Rotterdam in September, 1948, I believe it was—yes, in September, 1948, when the "Norwalk Victory" was loading there, were you not? A. I was present.

(78)

Q. That vessel was being operated in this same Black Diamond liner service, was she not? A. She was.

Q. You recall, do you not, that there was a fire during the course of loading operations, Captain Holaar? A. I do recall, sir, yes.

Q. And will you tell us in what commodity that fire broke out? A. In bags of naphthalene, apparently.

Q. And what were the circumstances as you recall them? A. The circumstances were such that naphthalene was being taken on aboard that vessel, on the forward deck in this particular instance—and bags coming out of the barge, and the deck at the time of the outbreak of the fire was practically already filled with naphthalene. It must have been among the last tons to be taken aboard

when a draft came out of this barge and was landed on top of a stow of this naphthalene—if I am not mistaken, on the port side abreast of No. 2 hatch, when as this draft landed there was a flame and a fire broke out among the bags of naphthalene.

Q. How many bags were there in that draft, Captain, as you recall it? A. There must have been about ten bags, approximately.

(79)

Q. How many, or rather what was the tonnage of the naphthalene stored on the deck of the "Black Gull" on this voyage of July 1952? A. On the forward deck we had about 300 tons and on the after deck we had about 250 to 260 tons of naphthalene all told.

Q. So that altogether there were something over 500 tons? A. There was, yes.

Q. Do you know how long it took to extinguish the fire on the Norwalk Victory, Captain Hollaar? A. It is long ago, but it was a matter of minutes. If I must make a guess, something like perhaps ten to fifteen minutes at the very most.

Q. And the fire was extinguished, I take it, by the use of water? A. Yes, it was.

Q. Now that was not solely water from the ship's own hoses, was it? A. No, the ship's own hoses were playing on the fire first, but in the meantime hoses were also broken out from the fire-fighting system adjacent to the cargo ships along the dock.

Q. That is quite an extensive system that they have at Rotterdam, do they not? A. Well, they have over 50 or 60 meters—let (80) us say 150 to 200 feet roughly—and this I am quoting by heart; I never actually measured it—they have a hose there ready for use.

Q. Is that true at all times during loading? A. Yes, that is true at all times.

Q. And that was true when the Norwalk Victory was there? A. That is true, yes.

Q. You were brought here for this trial by the Black Diamond Steamship Corporation, were you not, Captain? A. Or by the counsel for the Black Diamond Lines.

Q. And have you talked to me about this case on any prior occasion excepting when you gave your deposition in Rotterdam? A. To you?

Q. To me. A. Not that I recall, no.

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(84)

Deposition of Capt. W. J. Swart.

I have next, your Honor, a deposition of Captain W. J. Swart, taken at Rotterdam on August 10, 1955.

The transcript of the deposition is physically bound into a booklet with two others, which I am not offering at this time.

I suggest that I simply take out those pages and that we mark those.

The Court: Would that be satisfactory?

Mr. Zisgen: The pages I am marking are 30 to 34.

(Marked Libelants' Exhibit 16.)

Mr. Zisgen: Captain Swart, your Honor, testified that he is a nautical surveyor and has been a nautical surveyor for some 36 years.

He testified that he is also a sworn nautical surveyor, explaining that that is a designation that became current only at the end of World War II, and that it involves taking an oath annually. He did not describe the oath but I presume it is to

properly and carefully examine and report on his findings.

. . . .

(86) . . .

He was then asked whether there was any standard or any source of information which nautical surveyors at Rotterdam employ to ascertain what is the proper stowage of dangerous goods, and he answered, "We use as surveyors that book of Aeby." He was then shown the book, which has already been offered in evidence this morning, the third edition of Dr. Aeby's book "Dangerous Goods," and he identified that as the book to which he referred, adding at page 334, "You will find a note on that point."

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(89) . . .

Deposition of HAROLD FARSTAD.

I next plan to offer parts of the deposition of Harold Farstad, who was a steward on the vessel and who was called as a witness by Mr Pyne.

. . . .

"Direct examination by Mr. Pyne:

"Q. Were you formerly a member of the crew of the vessel called 'Black Gull'? A. Yes, I was steward.

"Q. When approximately, as best you can remember, month and year, did you first join the 'Black Gull'? A. On the 4th of October 1950.

"Q. And you joined them at that time as steward? A. Yes.

"Q. When did you leave the vessel? A. After the vessel had been on fire."

. . . .

(90) • • •

"Q. And the vessel was at sea at that time? A. Yes, about eight hours away from New York."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. Farstad, I see you smoke. A. Yes.

"Q. How long have you smoked? A. Twelve to 13 years."

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(93) • • •

"Q. Now, where were the crew's quarters on this ship? A. In the stern of the ship. The poop they call it."

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(94) • • •

"Q. Now, the members of the crew were allowed on the main deck during the voyage, were they not? A. Yes, they must.

"Q. And to get from their quarters aft to the bridge or to the bow of the ship it was necessary for them to pass along the main deck, was it not? A. They had to."

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(95) • • •

"Q. Where did you smoke when you smoked? A. In my cabin."

• • • •

"Q. Were you ever aft in the crew's quarters? A. Every day. It is my job to see if everything is in order.

"Q. Were there signs in the crew's quarters saying 'no smoking'? A. Not in the cabins, but in the alleyways."

• • • •

(96) • • •

"Q. You told us that passengers were not allowed to smoke in the dining saloon. Where were they allowed to smoke? A. In the cabin and in the smoking saloon.

"Q. Where was the smoking saloon? A. Next door to the dining saloon."

• • • •

"Q. And on this voyage some passengers did smoke, did they not? A. I cannot say, but I take it for granted that there were some amongst them that smoked."

• • • •

Deposition of J. A. DRIESPRONG.

(97) • • •

The first deposition from which I want to offer a portion is that of Johannes Andrianus Driesprong, • • •

• • • •

"Direct examination by Mr. Marcellino:

"Q. Where do you live, Mr. Driesprong? A. In Boskoop.

"Q. What is your nationality? A. Dutch.

"Q. On or about July 18, 1952, were you a passenger on the S.S. 'Black Gull'? A. I was.

(98)

"Q. Were your wife and daughter with you on that voyage? A. They were.

"Q. What cabin were you assigned to, all three of you? A. My wife and I were in cabin . . . I think No. 3, and our daughter next to us, in No. 4, I should say. But I cannot be quite certain about this.

"Q. When did the three of you board the vessel and where? A. In Rotterdam. On July 10th. At night."

Turning to page 5:

"Q. During the course of your voyage did you walk around the decks of the vessel? A. Yes, sir.

"Q. Can you tell us what decks you walked about? A. All the decks.

"Q. Did you walk on the maindeck? A. Yes, sir.

"Q. Did you see any merchandise stowed on the main deck both fore and aft? A. Yes.

"Q. Particularly as to the aft deck, what did you see? (99) A. A stack of bags on both sides of the boat; aft, and also in front.

"Q. Can you tell us generally whether it was a large number of bags, a small number of bags? A. No, a large number.

"Q. What area of the aftdeck did these bags cover? A. All of it."

* * * *

"Q. At the time you boarded the vessel at Rotterdam, Mr. Driesprong, or during the course of the voyage, were you given any instructions by any of the officers as to your movements aboard this vessel? A. No.

"Q. Were you told, by anyone at all, if you could or could not visit a certain area of the boat? A. No, sir.

"Q. Now in your cabin, was there any sign relative to smoking? A. What does the word 'relative' mean?

"Q. Concerning smoking. In your cabin was there any sign concerning smoking? A. No.

"Q. Do you smoke, Mr. Driesprong? A. I do.

"Q. Does Mrs. Driesprong smoke? (100) A. No, she does not.

"Q. Does your daughter smoke? A. She does.

"Q. Did you during the course of this voyage smoke in your cabin? A. Yes.

"Q. Did you during the course of this voyage smoke in the smoking room? A. Yes."

On page 8:

"Q. Can you tell me what other parts of the vessel did you smoke during the course of this voyage? A. In all the rooms, the public rooms so-called, you see, and also on the decks.

"Q. Which decks? Can you be a little more accurate about which decks you smoked on? A. Well, there were three decks you see. What we term . . . I should call the top deck, and then the sun-deck, and then the deck where the cargo was on.

"Q. And as I understand, you smoked on all of these decks from time to time? A. Yes."

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(101) • • •

"Q. Did you see any members of the crew smoking on the decks? A. Yes, sir."

• • • •

"Q. Mr. Driesprong, were there any signs relative to smoking outside of your cabin or anywhere on the vessel? A. I have not seen any."

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(102) • • •

"Cross-examination by Mr. Zisgen:

"Q. I see this morning that you smoke cigarettes. What does your daughter smoke, also cigarettes? A. Also cigarettes.

"Q. Did any other passengers smoke that you saw on the 'Black Gull'? A. Yes.

"Q. What did they smoke? A. Some pipe, some cigars, some cigarettes, (103) some all three; I smoke the three, too.

Deposition of J. A. Driesprong—Cross

"Q. What did the members of the crew of the 'Black Gull' whom you saw smoking, smoke? A. As far as I saw it, it were cigarettes."

• • • •

"Q. Mr. Driesprong, did any member of the crew or officer of the Black Gull request you not to smoke on any particular part of the ship? A. No."

• • • •

Deposition of JACOBUS DENOBEL.

The next deposition, your Honor, is that of Mr. de Nobel, • • •

"Direct examination by Mr. Marcellino:

"Q. Mr. deNobel, on or about July 18, 1952, were you a passenger on the SS 'Black Gull'? A. Yes, I was.

Further down the page:

"Q. You boarded this vessel where? A. In Rotterdam, on July 10th."

• • • •

(105) • • •

"Q. • • • Were there in your cabin any signs concerning smoking? A. None, no one, I never saw a sign concerning smoking.

"Q. In these portions of the decks which you visited during this voyage, did you see any signs concerning smoking? A. No.

"Q. Do you smoke, Mr. deNobel? A. Yes, I smoke a lot.

"Q. What do you smoke? A. Nearly always cigarettes.

"Q. Did you smoke in your cabin during the course of the voyage? (106) A. Of course I did.

Deposition of Jacobus deNobel—Direct

"Q. And did you smoke on the boat deck during the voyage? A. On this boat deck I smoked as well.

"Q. During the course of the voyage, did you see other passengers smoking? A. Well, nearly all was smoking, especially the men and, well, the daughter of Mr. Driesprong smoked and Mrs. Leeson smoked sometimes."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. deNobel, did any officer or member of the crew of the 'Black Gull' ever ask you not to smoke while you were on the ship? A. No one."

• • • •

Deposition of PETER SPAANDERMAN

"Direct examination by Mr. Marcellino:

"Q. Were you a passenger on the 'Black Gull' (107) on July 18, 1952? "A. I was."

• • • •

"Q. Where did you board the 'Black Gull'? A. In Rotterdam."

• • • •

"Q. Do you smoke, Mr. Spaanderman? A. Yes.

"Q. Did you smoke on this voyage? A. Yes, I did.

"Q. In your cabin were there any signs concerning smoking? A. Not a single notice.

"Q. In the course of this voyage, did you become generally familiar with the various decks of the boat? A. During the voyage I was several time on the lower deck, but most of the time I was on the decks around the bridge.

"Q. You say lower deck. Mr. Spaanderman, which deck do you mean? Is that the deck where the cargo was stowed on board? A. Yes.

"Q. Did you see this cargo? A. Yes.

(108)

"Q. Could you describe the cargo that was placed on the after deck of the boat? A. It was a cargo packed in bags and they were bags which had a hole in them and through these holes one could see that they contained a reddish yellowish substance.

"Q. What portion of this after deck did the cargo cover? A. Both sides.

"Q. Did you during the course of this voyage see any signs on the decks or anywhere along the ship concerning smoking? A. I personally did not see anything.

"Q. Did you see any sign, either in your cabin or on the decks, concerning the disposal of cigarettes or matches?"

• • • •

And the answer as given through the interpreter was: "I saw a cigar and a cigarette thrown down on the deck around the bridge, and in our cabin there (109) was an ashtray.

"Q. Did you see any printed signs either in your cabin or on any place on the decks of the boat concerning the disposal of cigarettes and matches? Signs? A. Not a single one."

• • • •

"Q. Were you told by any officers or members of the crew not to smoke on deck. A. We were never told so."

• • • •

(110) • • •

"Cross-examination by Mr. Zisgen:

"Q. Mr. Spaanderman, you told us that you had seen cigars and cigarettes thrown down around the bridge on the 'Black Gull.' Can you tell us when you saw that?"

• • • •

"A. Every day."

• • • •

Deposition of Jan P. Muller—Direct

(113)

Deposition of JAN P. MULLER.

Mr. Zisgen: The next deposition, your Honor, is that of Jan P. Muller.

• • • •

"Direct examination by Mr. Pyne:

"Q. Now, in July, 1952, were you on board the Steamship 'Black Gull' on a voyage between Europe and the United States, on which a fire occurred on that vessel? A. Yes.

"Q. Where did you board the vessel? A. In Rotterdam.

"Q. And for what purpose, or in what capacity, or why did you board her? A. Oh, just as a passenger."

• • • •

"Cross-examination by Mr. Zisgen:

"Q. Do you smoke, yourself? A. Sometimes.

"Q. What do you smoke, when you do smoke? A. Cigarettes.

"Q. And did you smoke on this voyage? A. I can't remember. I don't smoke very often, so I cannot remember. I may have smoked.

(114)

"Q. Did you see other people smoking on the voyage? A. I don't actually recall if they did, but I am pretty sure they did. I mean they are likely to have.

"Q. Did you entertain any fellow passengers in your cabin on the voyage? A. What do you mean entertain?

"Q. Did you have them in to visit you? A. There was another one with me in that cabin staying.

Deposition of Jan P. Muller—Cross

"Q. You were alone in the cabin? A. No. We were two of us. We were the only ones that was in the cabin with me.

"Q. If you saw anyone smoking on the voyage, it must have been outside of your cabin? A. Yes. Oh, yes.

"Q. And outside of their cabin? A. Yes."

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(115) • • •

"Q. Were you told at that time"—and by "that time" he is referring to the time when he received his ticket in Rotterdam at the office of the agent of the Black Diamond Lines—"Were you told at that time whether or not the ship would be carrying naphthalene? A. No, I didn't know that.

"Q. Were you warned at that time not to smoke on the voyage? A. I don't recall. I don't think so. I mean, the one thing I can remember pertaining to smoking is that sign in my cabin."

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(118) • • •

"Q. Mr. Muller, it wasn't clear to me when you were answering questions a moment ago, whether you yourself had walked from the passengers' section of the ship aft towards the rear of the ship. A. Oh, yes, I have been.

"Q. On the main deck where the naphthalene was? A. Well, that is where you had to walk through.

"Q. Through these passageways that you have described? A. Yes.

"Q. Do you recall whether any of your fellow passengers also walked through there? A. I believe everybody else did.

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"Q. Frequently? A. I wouldn't know. The main reason just to see what the poop looks like, and the bow.

"Q. Well, did you go there more than once? A. Well, once, two or three times, I don't know. I just would go on the bow and watch the sunset.

"Q. And on the stern to watch the sunrise? A. No, I didn't get up that early.

"Q. Well, I take it then that on more than one day you walked aft through those passageways you have described, is that right? A. What do you mean on the aft?

"Q. Towards the rear of the ship. A. Well, I would say I walked more to the front of the ship than I did to the rear.

"Q. But you did walk to the rear? A. Yes, I did.

"Q. And so did your fellow passengers? A. I think so."

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(120) * * *

Deposition of THOMAS D. LEESON.

The first deposition is that of Mr. Leeson—Thomas D. Leeson, * * *

"Direct examination by Mr. Abberley:

"Q. Were you a passenger on the M/V Black Gull on or about July 18, 1952? A. Yes.

"Q. Did you purchase a ticket for passage on that ship? A. Yes.

"Q. Where did you buy your ticket? A. At the Black Diamond Agency in Antwerp."

Then two-thirds of the way down, page 3:

"Q. When did you board the Black Gull? A. The afternoon of the sailing date, which was the 10th.

"Q. 10th of what? A. July.

"Q. 10th of July, 1952? A. 10th of July, 1952.

"Q. Where did you board the Black Gull? A. Rotterdam?"

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"Q. Mr. Leeson, tell us, if you can, whether there were any signs or regulations, written or oral, which might have been communicated to you with respect to your movements on the ship? A. We saw neither sign nor did we have any instructions given to us through the captain or through the members of the crew, as to where we could go.

"Q. Tell us generally where you would walk about on this ship? A. The deck, coming out from our cabin aft. We could walk there up through the dining room, and higher up, and then, on the main—shall we call it the promenade deck, which was the roof of our cabin. The roofs of our cabin.

"Q. When you were walking about, did you see other people walking on the decks of the ship? A. The other passengers."

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(122) • • •

"Q. Where did you see the crew or other passengers walk? A. Well, the crew mostly—mostly aft, on the main deck.

"Q. Did you notice any passengers walking in that area of the ship? A. Only one, to my recollection, who went down on that deck, fore and aft."

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(123) • • •

"Q. Did you notice any of them smoking? A. No. You mean, the crew?

"Q. Crew or passengers. A. Passengers—we smoked on our own deck.

"Q. Were receptacles provided for smoking on your own deck? A. I didn't see any."

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"Cross-examination by Mr. Longley:

"Q. You spoke of seeing some passengers walking aft. I understood you to say that the crew walked aft where this naphthalene was located? A. The crew, yes.

"Q. And if I followed you, you said there were passengers there? A. There was one passenger. I can specify one passenger. He was a German young boy, and I know he (127) used to get out along the fore part, from the bow of the ship. But I believe he was eventually told not to do it.

"Q. Were you ever given any warning about smoking? A. Neither written nor oral.

"Q. You smoked when you wanted to? A. Yes.

"Q. And you smoked where you wanted to? A. Well, yes and no. We only wanted to smoke on our own deck. That was the only part of the ship that interested us and we smoked there."

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"Q. And the other passengers, you saw them smoking up there?"

That, your Honor, refers to the upper decks and these passengers' housing amidships.

"A. Yes, I suppose I did, but it wasn't my affair——

"Q. Of course, but you did see them?"

• • • •

"A. Yes, I saw passengers smoking."

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Deposition of Thomas D. Leeson—Cross

"Q. On your voyage across the Atlantic, you had considerable hot weather, did you not? A. We had very hot weather and very fine weather the whole way across.

"Q. Smooth? A. Smooth and hot.

"Q. As the vessel proceeded, you did have some breeze that came across the decks from forward to aft, did you not? A. Yes, but to my memory we didn't have such an awful lot of wind. It was very hot, on the contrary."

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(129)

"Q. And there were no limitations given to you, either orally or in writing as to where you might walk while on the ship? A. None. That was left to the passengers' appreciation of comfort, I should think.

"Q. The smell of naphthalene, I gather from what you said, was very marked when you went on board at Rotterdam, was it not? A. Well, when we got on board at Rotterdam, after the time necessary to settle into our cabins, then—we began to take noses of this smell.

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(134) • • •

Deposition of JEANNE LEESON.

Mr. Zisgen: Then Mrs. Jeanne Leeson was examined • • •

"Direct examination by Mr. Abberley:

"Q. You have heard your husband testify with respect to instructions, signs and orders with respect to smoking

on the M/S 'Black Gull'. If you were asked those same questions, would your testimony be the same? A. Yes."

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"Q. Did you at any time ever notice any of the crew or any of the officers smoking? A. We didn't mix with the crew, so I wouldn't know. And the officers smoked after dinner."

Mr. Pyne interjected, "In the dining room?

The witness answered: "In the dining room or the lounge."

(135)

"Q. That is where you saw them smoke? A. Yes."

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"Q. Will you describe in chronological order and completely what happened to you on the evening of July 18, 1951, commencing at the time you were eating your dinner? A. After dinner we went to the lounge and had coffee. And then, this was when the first officer was called out. The captain went down. Then they came back and finished their coffee and when they finished (136) we all studied the book—usually there's a book, and passengers write something in the book or draw something. That took a long time and nobody agreed on what to write. So then eventually we decided to go up on deck. I don't know what time it was but it was dark and we stayed there a little while and the men smoked. These two Dutchmen usually had cigars and the ladies didn't smoke. None of the ladies smoked."

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"Q. On the deck that you used to walk, were there any receptacles to receive burned matches or cigarettes? A. No.

(138)

"Q. Did you ever receive any warning from anyone, either when you purchased your ticket or from the ship's officers, about smoking? A. No.

"Q. Did anyone ever tell you about the naphthalene being highly inflammable? A. No.

"Q. Did you know anything about naphthalene? A. No."

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(139) • • •

"Q. What would you say was the proximate temperature of the weather you experienced during the voyage? Was it very hot? A. Yes. It was very hot.

"Q. You didn't have occasion to look at a thermometer, I suppose? A. We saw no thermometer, but I suffer from heat and I suffered.

"Q. Could you give us some estimate? Was it 100 degrees? What would you say? A. Well, being at sea, it would be less than on land, • • •."

• • • •

"Q. Anyway, it was a blazing hot sun and you cannot tell us how hot it was? (140) A. That's right."

Skipping a question and answer,

"Q. You spoke of the naphthalene running down. That was, of course, after the fire broke out? A. Yes.

"Q. You mean, it was a liquid then? A. Yes. To me it looked like a liquid.

"Q. You were in the boat at the time, were you? A. Yes.

"Q. And looking up at the ship's deck you could see this material running down? A. Yes."

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Deposition of Dr. Jules Aeby—Preliminary Examination

(152) • • •

Deposition of Dr. Jules Aeby.

Mr. Zisgen: • • •

I next plan to offer portions of the deposition of Dr. Jules Aeby, • • •

(153) • • •

Preliminary statement by Mr. Pyne.

"Pursuant to my statement on the record at the hearing August 1st that if Mr. Zisgen so desired, I would advise Dr. Aeby that I had no objections to Mr. Zisgen examining Dr. Aeby and would cooperate to produce him, I did so advise Dr. Aeby and I have arranged for Dr. Aeby's attendance here this morning and he already has been duly sworn as a witness by the (154) Consul. I will merely ask him a few preliminary questions for identification only."

Then the preliminary examination by Mr. Pyne:

"Q. And you are a chemist? A. Yes.

"Q. And you have been a chemist for a long number of years? A. Yes.

"Q. And did you last June meet me here in Antwerp at your home and have a discussion with me in connection with the 'Black Gull' case and the fire on the 'Black Gull' which occurred in July 1952? A. I had."

Mr. Pyne then said, "That is all the preliminary." And I commenced the direct examination:

Deposition of Dr. Jules Aeby—Direct

"Direct examination by Mr. Zisgen:

"Q. Dr. Aeby, have you ever seen or talked to me before this morning? A. I have not.

"Q. Will you tell me something of your education and your training to be a chemist? A. After my school, what I'll call my education until 18 years in Antwerp, I went to Germany to the technical school at Karlsruhe, Baden and I studied at (155) this high school for 3 years. Then went into practice and whilst in practice I studied at Berne, Switzerland; I got my degree which is doctor in philosophy, but not for science because there is no faculty for science. The title is doctor in philosophy. Then I had several situations in the practice until I came back to Antwerp to look into the interests of the Chilean Nitrate Industries, by whom I was retained 30 years, but from the beginning I was interested in the question of dangerous goods, because I acted as consulting chemist for the Red Star Line, which was then the biggest shipping company in the port."

I interrupted:

"Q. If I may stop you, sir, about what year did you return to Antwerp to do work for the Chilean Nitrate Industry? A. I came back to Antwerp in 1898 and I was not quite 27. I was 26, and from that time on I remained in Antwerp in different capacities, the main being to represent the Chilean Nitrate Industry but I was free from the beginning to be consultant for other companies, of which the most important was the Red Star Line and it was in the service of the Red Star (156) Line that I got interested to study this particular question of dangerous goods at a time when it was practically unknown and as it was so little known my friends asked me to put something in book form and the first edition of my book, which carries the title 'Dangerous Goods' dates from 1910.

"Q. And now, I will show you Dr. Aeby a book which has been marked 'Libellants' Exhibit 3 for identification'. Will you tell me whether or not it is the 1910 edition of your book? A. It is. This is the 1910 edition. The first. And in the preface I said that I had already 10 years experience The book met with success. It was soon sold out and then after the first World War as there was still a great demand for it, I made a second, 1922, edition which was somewhat changed, but not too much, because I was very busy and I thought that as I had plenty of friends for the first edition, I did not make too many changes for the second edition. All the primary stuff was there."

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"Q. Could you tell how many copies were printed of the 1910 edition? A. No, I cannot tell you. I do not know.

"Q. Did it run to 10,000 copies? A. Certainly not.

"Q. A thousand maybe? A. If it is convenient for you, I can tell you the edition 1922, the second. That was 2000.

"Q. And what kind of people, that is in what occupation were the people who purchased either the 1910 or the 1922 edition or both? A. In the first the shipping people, the agents, brokers and ship owners, insurance people, the average adjusters, lawyers. I can give you a lot of testimonies that I got. Lawyers, shipping people, insurance people, lawyers, average adjusters, manufacturers of course.

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"Q. Would it be fair to say that in general the 1910 and 1922 editions of your book 'Dangerous Goods' was

purchased principally by people interested in the transportation of the goods listed in your book? A. Yes.

"Q. It was a transportation book? A. Yes.

"Q. Now in that book in both the 1910 and 1922 editions, you wrote all that you then knew of the characteristics and the nature of the risks involved in the transportation of the goods listed in your book, did you not? A. Yes.

"Q. And you put in there also, I see by your preface, all of the information that you could gather from any source about those goods? A. Yes.

"Q. And whatever comments or recommendations you made in those two editions represented, did they not, your best opinion at that time as an expert? A. Yes.

"Q. Now in both those editions, Dr. Aeby, you divided the goods mentioned in those books into certain categories, did you not? (159) A. Yes.

"Q. And you gave certain definitions for the categories into which you divided the goods in the books? A. Yes.

"Q. One of those categories was the category of organic compounds, was it not? A. Yes.

"Q. And did you not define organic compounds as substances capable of burning when fire was applied to them? A. Exactly my words.

"Q. Now you also defined the term inflammable in your 1910 and 1922 editions, did you not? A Yes."

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(161)

"Q. As of the time when your 1922 edition and your 1910 edition were published, they represented your best opinion at that time, did they not, Dr. Aeby? A. Yes.

"Q. And did you not in 1910 edition define inflammable in the words that I gave you a few moments ago? A. If it is possible, would you repeat the words."

• • • •

Deposition of Dr. Jules Aeby—Direct

"Q. Dr. Aeby, I show you page 36 of your 1910 edition of your book. Did you define inflammable as substances which at a more or less high temperature give off such gases as in the presence of a naked flame ignite or explode? A. Yes, sir.

"Q. And did you not in your——"

Dr. Aeby interrupted: "Excuse me, haven't you got a 1922 edition?"

"Q. No, doctor, I do not. I have only the 1910 edition and the 1938 edition. A. I could produce the 1922 edition. I cannot say offhand if I said the same thing in the 1922 edition.

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"Q. At least in the 1910 edition you said that. A. Yes, it stands there. You need not ask me.

"Q. You divided inflammable substances into several categories, one of them was substances of which the dust is inflammable, did you not? A. Again we can look."

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"Q. Dr. Aeby, I show you Libelants' Exhibit 4 for identification. Is that not the 1938 edition of your book 'Dangerous Goods'? A. It is."

That is the blue-covered book which Captain Hollaar also identified, your Honor, and a photostat of which has been offered as Libelants' Exhibit 9.

"Q. In this 1938 edition for the first time you endeavored to supply information as to the packing and stowage of many of the commodities listed in that book, did you not? A. I did.

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"Q. That was something that had not appeared in the two earlier editions to any great extent, was it not? A. To any great extent? It was certainly a novelty to put stowage and packing for most good.

"Q. That is what I meant, sir. A. That is quite right."

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(166)

"Q. And this information which you tried to give them in your book represented in each instance your best opinion concerning the commodity at the time you published the edition in which that commodity was mentioned? A. Yes.

"Q. Now you did list naphtalene in your 1910 edition? Did you not? I think you will find it at page 174, item 219. A. Naphtalene, yes.

"Q. And you also listed naphtalene in your 1938 edition which is Libelants' Exhibit 4 for identification. A. The answer is yes.

"Q. In your 1938 edition you made certain recommendations concerning the stowage of naphthalene, did you not? A. Yes.

"Q. And one of these recommendations was that if stowed on deck that naphtalene should be covered and protected from the rays of the sun, was it not? A. Exactly.

"Q. Now why, what was the reason for that recommendation, Dr. Aeby? A. The reason was that uncovered bags, burlap (167) or jute bags, uncovered, could if you throw, take the most usual thing, a cigarette or cigar stump on them, fire may result.

"Q. Was there any other reason for that recommendation, sir? You say protected from the rays of the sun, what did you fear if the naphtalene bags were not covered and protected from the rays of the sun? A. Well,

I thought that if the sun was too strong, the possibility of taking fire by flame or by cigarette or cigar stump was greater. The higher the temperature of the naphtalene in the bags themselves, the greater is the danger that with a match you can put fire on it.

"Q. That is because a greater quantity of gases are liberated at a higher temperature, is that correct? A. Please repeat.

"Q. That is because at a higher temperature more gases are liberated from the naphtalene itself, is it not? A. Yes.

"Q. And it is the gas which is liberated from the naphtalene which may be ignited more readily than the naphtalene itself, is that not so? (168) A. Naphtalene as I said is volatile. You know what volatile means?

"Q. I think it means that gases are given off from it readily. Is that correct? A. Absolutely. I said very simply if a commodity smells, it is because particles of that commodity blow into the air. We all know that naphtalene has a very strong smell. It is even the smell, the objectionable smell is one of its qualities and one of its faults. So if the temperature is high the smell therefore revoked by a greater evolution of the particles would be greater.

"Q. The higher the temperature the more particles go off from it into the air, is that correct? A. Yes, and strike the nose. I don't think anybody has made the experiments to see how many gas comes from naphtalene, but it is evident that if a product smells it smells because it gives off particles of itself.

"Q. And those particles which are given off will ignite at the temperature of approximately 125 degrees Fahrenheit, is that correct? A. The flash point is given at 125 degrees Fahrenheit or in Centigrade 52 degrees. But that figure (169) of the flash point is difficult to give because naphtalene from a chemical standpoint is pure

naphtalene but as pointed out already here, there is pure naphtalene and crude naphtalene and there are different qualities of crude naphtalene. So it is rather difficult to give an exact flash point that applies to other products as well.

"Q. But now if the naphtalene in any particular instance were not pure naphtalene but were contaminated with some other substance or substances, what is your view as to the effect of that on the flash point. Would it be higher or lower than 125° Fahrenheit? A. That depends on the product that is present apart from pure naphtalene which is defined by chemical formula. Naphtalene is C 10 H8, but crude naphtalene is not C 10 H8. It has creosote and other things and in one factory the flash point will be lower, in another factory it will be higher, it depends on the raw product.

"Q. But then in the case of crude naphthalene it may be that the flash point is even lower than 125° Fahrenheit, is that correct? A. I don't think so.

"Q. You don't? You think that in the case of (170) crude naphthalene it would probably be somewhat higher than 125°. Is that correct? A. I could not tell you. But I can tell you that in the case that we have here under examination I would say if samples are to be obtained the flash point that is found is the flash point.

"Q. But there is no way of predicting what those samples would show? A. No. When I'm asked about the flash point, I must be able to take it myself."

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(171) • • •

"Q. And since 1938 at least and up until the time you published your fourth edition in June of this year you have felt it preferable that if naphthalene is stowed on deck it be covered and protected from the rays of the sun, is that correct? A. Yes.

"Q. And you have felt that because of the dangers that you have told us about? A. Yes."

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(174) • • •

"Re-direct examination by Mr. Zisgen:

"Q. Dr. Aeby, is it not a fact that the temperature of different parts of a ship varies during a voyage? A. The temperature will vary.

"Q. Yes. And even at the same moment is it not a fact that the temperature on a ship will vary in different parts of a ship? A. I have never taken the temperatures in different parts of a ship. I cannot answer that question.

"Q. Would you expect that the temperature inside the chart room on the bridge in the shade would be exactly the same as the temperature at the same moment on an open steel deck with the sun shining down brightly? A. The temperature will not be the same.

"Q. And which of the two under those circumstances would be the higher, would you expect? A. The open place.

"Q. The open deck? A. Yes.

"Q. Is it not also true that the temperature in an enclosed space on a deck, into which the rays of the sun penetrate and from the sides of which the heat of (175) the sun is reflected will be higher than the temperatures out on an unenclosed portion of the deck? A. It depends on the wind, if there should be wind, if I may say so.

"Q. If we assume that the enclosed place which I mentioned is protected from the wind, would it not follow that the temperature within that protected place would be higher than the temperature on the part of the deck across which the wind could sweep freely? A. Yes.

"Q. Now isn't it true, Dr. Aeby, that even at a tempera-

ture of 70 degrees Fahrenheit and 75 degrees Fahrenheit particles of naphthalene will be liberated into the air? A. Particles are always liberated into the air, as I explained before.

"Q. Because even at those temperatures it has an odor, has it not? A. I made no experiments of it, I could not tell.

"Q. Well, have you ever put camphor balls in your clothing, and camphor balls are made of naphthalene, are they not? A. Yes, pure naphthalene.

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"Q. Pure naphthalene? A. Yes.

Page 15:

"Q. Isn't it a fact that even an ordinary house temperature of 65 or 70° Fahrenheit, you can smell the odor of the moth balls. A. Yes.

"Q. Then am I not correct in saying that at temperatures of 65, 70, 75° Fahrenheit particles of naphthalene are liberated into the air? A. That is correct."

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Deposition of CARLO VAN DEN BOSCH.

> Mr. Zisgen: The next, your Honor, is a different kind of deposition. It is the deposition of a Belgian lawyer, Carlo van den Bosch, * * *

"Direct examination by Mr. Zisgen:

"Q. Where do you live, Mr. van den Bosch? A. I live in Antwerp.

"Q. And where is your office?" And he gave the address.

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"Q. What is your occupation? A. I am a lawyer-barrister.

"Q. Will you tell us where you were educated and what degrees you have? A. I was educated in the University of Brussels and got at graduation the degree of what we call Doctor in Law, by the Central Jury, in 1930.

"Q. And when did you become a member of the bar in Antwerp? A. Soon after, i. e. exactly in September, 1930.

"Q. Are you, or are you not, entitled to practice in all the courts of Belgium? A. I am entitled to practice in all the courts in Belgium, except the Court of Cassation."

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"Q. Do you have some connection with the Comite Maritime International? A. I became secretary of that International body in 1947 and I am still acting in that quality.

"Q. Is that or is it not the international body of which the Maritime Law Association of the United States forms a part? A. It is right that the Maritime Law Association of the United States forms part of this Comite Maritime International, together with twenty other national associations of maritime law.

"Q. What is the purpose of the Comite Maritime International in general? A. The purpose of the Comite Maritime International is to try to get unification of maritime laws throughout the world.

"Q. Do you have some connection with the Diplomatic Conference of Maritime Law? A. I am, indeed, a secretary of the Diplomatic (179) Conference of Maritime Law, which purpose it is, as an inter-governmental body, to draft and sign international conventions on maritime law, based on the labors of the Comite Maritime International.

Deposition of Carlo van den Bosch—Direct

"Q. Do I understand, Mr. van den Bosch, that the Diplomatic Conference of Maritime Law is an inter-governmental body? A. That is right.

"Q. When was its last meeting? A. The last meeting was held in Brussels in May, 1952, where three conventions were brought about and signed, namely, on the civil and penal competence in matters of collisions and on (provision) arrest of the ships.

"Q. Was the United States represented at that conference? A. The United States was represented by an observer.

"Q. And who or what was the observer, if you recall? A. I cannot tell it by heart.

"Q. Do you engage in any teaching activities, Mr. van den Bosch? A. I am teaching maritime law in general at the Brussels University since 1951.

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"Q. In the course of your twenty-five years as a member of the bar in Antwerp, have you or have you not been engaged in the practice of maritime law? A. Most of the cases which I had to handle were in fact maritime cases.

"Q. Can you tell us one or two clients from whom you have acted as a maritime attorney? A. I am acting regularly for the Compagnie Maritime Belge, for the ship owners' companies represented by the Agence Maritime Internationale, such as the Glenn Line, or the Canadian Pacific Railway Co. and United States Lines.

"Q. Now, Mr. van den Bosch, is the Kingdom of Belgium a party to the International Convention concerning rules relating to bills of lading, otherwise known as The Hague Rules Convention? A. Belgium has been represented at the Diplomatic Conference of 1924. It has

signed the convention on bills of lading and has ratified same by the Royal Decree of the 13th of July, 1927."

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(183) • • •

"Q. Under Belgian law, when goods are carried on deck and the provisions of The Hague rules are not applicable of their own force, is it possible for the parties of the contract of carriage to agree that The Hague rules shall govern the transportation of the goods? A. Outside the scope of the so-called Hague rules and the Belgian law of 28 November 1928, which is of public order, parties are at liberty to agree upon the conditions under which the carriage shall be performed. So they are entitled to make the Hague rules entirely or partly applicable to a cargo loaded on deck.

"Q. Does the Kingdom of Belgium have any other legislation in addition to the convention and the (184) law of November 28, 1928, bearing upon the responsibility of the carrier in instances in which goods are carried on deck? A. Besides the Hague rules and the law of November 28, 1928, Belgium has its common law, which is expressed in article 59 and especially with regard to deck cargo, article 66 of Book II of the Commercial Code."

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"Q. Under the provision of those articles, what is the obligation of a carrier for goods carried on deck? A. To answer this question, articles 59 and 66 are to be combined. In article 59 the general rule of the carriers' liability is laid down. In that (185) way the carrier is held liable for the goods which are under his custody. He only escapes liability if he proves that loss or damage to the goods occurred without his fault or negligence. Article 66 completes this rule and is dealing with goods stowed on deck. Under this provision the captain is

held liable for every damage whatsoever occurred to goods stowed on deck without the written agreement of the shipper. This provision is to be construed so that the captain is liable for such goods, even if the damage occurred without his fault. If the shipper agrees upon the cargo being loaded on deck, there is no more a general and irrefutable presumption of liability against the carrier, but such agreement does not exempt the carrier from giving all care to the goods, in order to prevent loss or damage to same, where on the other hand it is up to the cargo owner to prove that the damage or loss occurred as a result of a fault or a negligence of the captain or the crew.

"Q. You used the term 'the captain' several times. In Belgium when you use 'the captain' to whom does that refer? A. Under Belgian law the captain is considered the legal representative of the shipowner. In our (186) juridical language we generally use 'captain' in the place of shipowner."

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(192) • • •

Deposition of Dr. A. C. W. Beerman.

Mr. Zisgen: The next deposition, your Honor, is that of a Dutch lawyer, Dr. A. C. W. Beerman, • • •

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"Direct examination by Mr. Zisgen.

"Q. Where do you live? A. In Rotterdam.

"Q. What is your occupation? A. I am an advocate in this city since 1925.

"Q. Are you a member of any law firm? A. I am a

member of the firm of Drs. Nolst Trenite, Beerman, Bergsma & Baanders.

"Q. Will you tell us something of your education and preparation for your profession? A. I followed the gymnasium in Amsterdam and thereafter studied law at the University of Leyden. I was admitted to the bar at Rotterdam in 1925. I was a junior partner in a firm at that time called Drs. Jacobson Nauta, Van Walsum & Vlug. In 1930 I became a senior partner at my present office.

"Q. Did you receive any degree? A. Yes, I took my doctor's examination at Leyden.

"Q. And what degree did you receive? A. We call it Master of Law.

(197)

"Q. Are you admitted to practice in all of the courts of the Kingdom of the Netherlands? A. Yes.

"Q. Since your admission to the bar have you continually practiced law until the present time? A. Yes, that's correct.

"Q. Have you specialized in any particular field of the law since your admission to the bar? A. I have specialized on maritime matters, and also matters of industrial property.

"Q. Throughout your career? A. Yes.

"Q. Are you a member of any legal societies which have the field of maritime law for their principal object? A. I am a member of the Netherlands Association for Maritime Law, which is a branch of the Comite Maritime International, and a member of the Board of the Dutch Branch of the International Law Association.

"Q. Are you also a member of any association of lawyers in the Netherlands? A. I am a member of the Netherlands Juridical Association (Nederlandse Juristen

Vereniging), and a member of the Netherlands Association of attorneys."

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(199) • • •

"Q. Under the laws of the Netherlands may the parties to a contract of ocean carriage lawfully provide that their contract may be governed by the Hague Rules in whole or in part, even though the Kingdom of the Netherlands is not a party to the convention itself? A. They can do so."

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(200) • • •

"Q. Under the law of the Netherlands what is the responsibility of an ocean carrier with respect to cargo carried on deck with the permission of (201) the shipper? A. According to art. 470 the carrier is always responsible for damage caused by rough handling or insufficient custody of the goods, no matter where the goods are shipped, on deck or not. Of course, if the goods are shipped on deck with the special permission of the shipper, then he cannot complain because of the mere fact that the goods were stowed on deck, but the carrier remains always obliged to take proper measures for the protection and the safety of the goods stowed on deck.

"Q. And by proper measures, what do you mean? A. Proper measures mean that stowage must be in accordance with the legal provisions and with normal standards of good stowage.

"Q. Are those standards, standards which take into account the quantity of the goods and their characteristics, or are they not? A. Certainly, both elements have to be taken into account.

"Q. May an ocean carrier under the law of the Netherlands exempt itself by contract from liability for negli-

gence in the stowage of cargo which is carried on deck with the permission of the shipper? (202) A. No, he remains responsible for proper stowage."

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"Q. What factors do the Netherland Courts take into account in determining whether stowage of goods is proper or is negligent? A. All relevant factors, quantity of the goods, question of other goods already on board, question of the packing.

"Q. Are there any statutes or decrees of the Kingdom of the Netherlands relating to the stowage and carriage of dangerous cargoes? A. Yes. We have the Shipping Law, which was made in 1909 and thereafter changed, but the main part remained the same, and pursuant to that Shipping (203) Law there are various Royal Ordinances. The Law authorizes the Crown—i. e. the minister concerned—to issue general ordinances and we have under that Shipping Law, Dutch 'Schepenwet,' a Royal Ordinance called in Dutch 'algemene maatregel van bestuur,' which is known as the 'Schepenbesluit,' Shipping Decree.

"Now, the Shipping Law provides in art. 4 that the captain is obliged before starting a voyage to see to it that the loading, the stowage and the ballasting of the ship comply with the requirements of seaworthiness and safety.

"I have quoted the 'Schepenwet' in the edition Schuurman & Jordens Nr 16.

"Q. Are the laws and ordinances to which you have just referred laws and ordinances which were in effect in July 1952? A. Yes.

"Q. Are there in the laws and ordinances to which you have just referred any definitions of dangerous cargoes other than liquids? A. There are.

"Q. And what is or are those definitions? A. In the Shipping Ordinance which was operative in June and

July 1952, art. 94 deals with (204) dangerous goods. This article says that as dangerous goods are considered solid goods which can easily be brought to ignition or which when heated to 70°C can give off inflammable gases. These goods must be packed in gas-tight packings. When they are loaded on deck they should not be exposed to direct rays of the sun.

"Q. Do you have with you a copy of art. 94? A. I have it here before me."

(205) • • •

"Q. Were there in effect in June and July 1952 any laws or regulations of the Kingdom of the Netherlands which specifically regulate the stowage of naphthalene by name? A. Yes.

"Q. And what are those regulations or laws? A. In July 1952 there was in force a regulation for the carriage of naphthalene which I quote in English translation:

> 'Naphthalene must be packed in bags of close weave, wooden or steel drums or cases, which must be closed in such a way that the coming out of the contents can be adequately prevented. The stowage may take place on or under deck. On deck naphthalene must be protected against the influence of sun rays and must be kept away from the men's quarters. Under deck naphthalene must be stowed in well-ventilated dry space. In both cases naphthalene should not be stowed together with explosives, gases under pressure, or goods which when moist give off combustible gases, or with goods which are liable to heating or self-combustion.'

(213) • • •

"Q. Was the regulation which you have just translated to us contained in any written or printed book or pamphlet in July, 1952? (214) A. I think the rules which the Shipping Inspection applied it is the intention to have them published together in a book Dangerous Cargoes, but so far as I know that publication has not yet been completed.

"Q. Was there in July, 1952 any way in which a shipper or a carrier could ascertain what regulations were in force with respect to the carriage of naphthalene? A. Certainly. He could get all the information at the Inspection of Shipping and at the General Inspection in The Hague. There is an office of the Shipping Inspection at Rotterdam.

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(216) • • •

"Q. In 1952, did you have any connections or any position which afforded you an opportunity to know whether or not shippers and carriers were aware that by application to the Shipping Inspection they could ascertain what regulations there were concerning the carriage or stowage of dangerous goods and particularly of naphthalene? A. I have many contacts with shippers and carriers in the port of Rotterdam in my function as President of the Foundation 'Havenbelangen', that is the foundation which has to promote the general interests of the port of Rotterdam. I am also a member of the Board of Directors of two shipping companies. On the strength of my experience I am inclined to state that the function of the Shipping Inspection is very well known in this port because of its close relations with the shipping world.

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(219) * * *

"Q. In instances in which goods are not specifically mentioned by name in a statute or regulation of the Netherlands, and in which the Shipping Inspection or the Inspector General of Shipping has no regulations applying to stowage or carriage of such goods, to what sources do the courts of the Netherlands look for standards to apply as to stowage and carriage of such goods? A. They may appoint experts, nautical experts, captains of sea-going ships with great experience, or they may also place trust in handbooks about stowage.

"Q. When the goods themselves are chemicals, is (220) there any other source of information to which they may look? A. They may ask chemical engineers.

"Q. Is there any commentary or handbook dealing with the stowage and carriage of books which is commonly referred to by Courts in The Netherlands or authorities in The Netherlands? A. In many questions of stowage we quote a book called 'Loading,' that is the leading handbook in The Netherlands, written by Mr. Noordraven, teacher to a nautical college. I have a copy of that book here.

"Q. Does that book contain any definition of highly inflammable goods and particularly of coal tar products? A. Chapter 2 is dedicated to the stowage of dangerous goods. It mainly refers to liquids. On page 97 are mentioned goods which are highly inflammable, such as spirits, naphtha, etc. It is stated there that the relevant article of the Royal Ordinance (this book was published in 1928 so this refers to another ordinance than the one valid in 1952) at that time does not give a definition as to which goods have to be considered as highly inflammable, and that it is very often a question of degree. Most times liquids which when heated (221) up to 30 . give

off inflammable vapors which when mixed with air become explosive, are considered as highly inflammable.

"Then he quotes a Royal Ordinance of 1885 and of the 23rd of March, 1903, which mention as highly inflammable all products of tar and tar oil, in so far as the point of ignition when defined with the apparatus of Pensky lies below 80°. I refer to what is printed on page 98."

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(222) * * *

"Cross-examination by Mr. Stonebridge:

"Q. Do you have a harbour master in Rotterdam? A. We have.

"Q. What is his function? A. We have two. We have the municipal harbor master and we have a government harbor master (Rijkshavenmeester).

"Q. In effect you have a municipal and a national harbor master. (223) A. National is not the right word, he is appointed by the national government.

"Q. What are their functions? A. The municipal harbor master has the control of the harbor basins, the docks, which are municipal. He can give directions to the ships about their mooring. He can give indications that a dock is so crowded that for the time being no more ships are allowed. He is the chief of the Municipal Harbor Pilot Service. Whereas the harbor master appointed by the Government has the control of the river, which is maintained and dredged by the Government. The harbor master exercises no control with respect to stowage, that is the task of the Shipping Inspection. Under the Shipping Law we have the Inspector General of Shipping, who has his office at The Hague, and at various places, Rotterdam, Amsterdam, etc., local shipping inspectors. Their duty is to see to it that the provisions of the Shipping Law and of the Ordinances promulgated pursuant to that law are respected.

Deposition of Dr. A. C. W. Beerman—Cross

"Q. It is correctly understood from what you said that the harbor masters have no control or no direct interest in the safety on the harbor with respect to goods which may be carried or may not be carried? (224) A. That they have no control whatsoever with respect to the safety of goods is perhaps somewhat exaggerated. The harbor master may exercise a certain control in respect of the local regulations which are in force to prevent fires in the docks, in the sheds. But as I have said before it is not the task of the harbor master to control the stowage on board ships.

"Q. Could you say that it would or would not be likely that the harbor master would know what regulations exist, what royal ordinances have been issued with respect to stowage of particular commodities? A. I wonder whether the harbor master will know the details of the ordinances issued pursuant to the Shipping Law. It is not his task to know them.

"Q. Would you say that if people in shipping circles in general were aware of the existence of a particular regulation with respect to stowage, the harbor master also would be aware of such regulations? A. I would say no, because the harbor masters have very often no experience in the management of ships. I may add that our present harbor master was a former officer of the Navy.

"Q. Who is your present harbor master, appointed by the local authorities? (225) A. Captain Leeuwen.

"Q. Before his appointment as harbor master he held the rank of captain in the Netherlands Navy? A. That is correct.

"Q. Getting down to the regulation which you mentioned as being in effect in June-July, 1952 with respect to the stowage of naphthalene, did I understand you correctly to state that that regulation had not been published in July 1952? A. Not in a royal ordinance.

"Q. Is it not a fact that the regulation with respect the stowage of naphthalene has not as yet been published in any official regulation, decree, ordinance or law? Is it not a fact that when, if and whereas a royal decree, ordinance or law is published by the Netherlands having particular reference to the packing and stowage of naphthalene the language as translated by you may or may not be the final language as approved by the Government? A. What I read out to you was a provision of the Shipping Inspection for naphthalene.

"Q. Was that an actual or a proposed provision? A. So far as I know an actual provision, but under the Royal Ordinance the Shipping Inspection is entitled (226) to issue special provisions with respect to various dangerous goods. It has been provided that all these special provisions shall be published together in a book under the title Dangerous Goods. The book containing the total provisions which have been issued has not yet been published.

"Q. Has in fact there been an official issuance of the language referred to by you in any decree or publication of whatever form it takes in the Netherlands? A. I think it is a directive of the Shipping Inspection, which has not been published in the same way as royal ordinances. I am not sure whether it has been issued in circular letters or published in technical papers. I should have to inquire of the Shipping Inspector whether this is an answer to a request for information or whether they have circularized this special provision or published it in a technical paper.

"Q. On the subject of general jurisprudence in the Netherlands, is it customary for a law, decree or regulation of any form to become effective before it is officially published? A. If it is a law in the formal sense of the word it must be published in the 'Staatsblad'. But (227) we have all kinds of general provisions, royal

ordinances, ministerial decisions, directives of government bodies, for instance of the customs, shipping inspections, etc. I can only say that laws, royal ordinances, ministerial resolutions are always published either in the Staatsblad or in the Staatscourant, both official publications.

"If I want to be informed about official directives I cannot always find them published in either of those publications.

"Q. With respect a general regulation applying to an industry as a whole, is it required under the law of the Netherlands that that regulation is published? A. Not always, it depends on the circumstances. A directive which is binding for a branch of industry is not always published in such a way as a royal ordinance.

"Q. But such general regulation affecting an entire industry is in normal course published in some form or other? A. That may be true."

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(229) • • •

"Q. Getting back to the earlier testimony with respect harbour masters in the port of Rotterdam, (230) specifically the harbour master who was formerly a captain in the Royal Navy, would you say in your opinion, Dr. Beerman, that he would be more familiar with the duties of a harbour master than you? A. I think so.

"Q. If that particular harbour master—this is hypothetical—had written a letter in November of 1953 and in that letter he had stated that it was a part of his duties to ascertain what restrictive rules or regulations existed concerning the handling of dangerous goods in the port of Rotterdam, and whether those regulations were being observed, would you say that that was probably a true statement? A. That is a correct statement.

"Q. If in that same hypothetical letter the harbour master stated with regard to shipments of naphtalene in bags 'I hereby declare that no rules or regulations are in force here concerning this commodity and accordingly this office does not interfere with the handling of it,' would you say that that was a true statement? A. No. Insofar it may be true, but by its incompleteness may give rise to misunderstanding. When you asked me first about the task of the harbour (231) master, I told you that he had to see to it that the harbour regulations were observed. Now, the harbour regulations, 'Havenverordening,' contains certain provisions about the handling of goods, but not about the stowage of these goods on board of seaships, but about the storage of these goods. Dangerous cargoes and highly inflammable cargoes can only be stored at certain places and in sheds with special equipment. When the harbour master has stated that he knows of no special provisions in respect of the handling of naphthalene he must have referred to the local regulations about the storage of naphthalene in sheds. If he referred to the stowage on board seaships he would have surpassed the limits of his task. Is that clear?

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"Re-direct examination by Mr. Zisgen:

"Q. Dr. Beerman, is the regulation, as I will call it, which is set out in Beerman Exhibit 3 for identification such a type of regulation that it must be published in printed form in order to be in effect? A. I don't believe that a special form of (232) publication is required. I refer to article 94 par. 11a authorizing the chief of the Shipping Inspection to issue additional provisions about the stowage and packing and the volume of the goods referred to in that article if he deems necessary to do so. There is no special form of publicity prescribed.

He may also give such an additional provision to my view in a letter to a special carrier.

"I wish to add that in par. 13 of the quoted art. 94 of the Royal Decree which was in force in June/July 1952, it has been provided that there will be an enumeration of dangerous cargoes with additional provisions about stowage and packing in a book with the title 'Dangerous Cargoes,' but that publication has on account of various reasons been delayed.

"Q. And those two paragraphs of art. 94 to which you have referred appear, do they not, in the book which has been marked Beerman Exhibit 2 for identification? A. That is so."

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(233) • • •

Deposition of Dr. Sjur Braekhus.

Next, your Honor, is a portion of the deposition of Dr. Braekhus, • • •

"Direct examination by Mr. Pyne:

"Q. • • • What is your occupation? A. I am professor of law at the University, Oslo.

"Q. How long, Professor, have you been in that occupation as Law Professor? A. I was made a Professor of Law in January 1948—about 7½ years."

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(238) • • •

"Cross-examination by Mr. Zigsen:

"Q. Is it permissible under the law of Norway for the parties to a contract of ocean carriage of cargo to

stipulate that their contract shall be governed in whole or in part by the Hague rules, (239) in instances in which the Hague rules do not apply of their own force? A. Yes, it is permissible.

"Q. Is there in effect in Norway any Law, Statute or otherwise, relating to the responsibility of an ocean carrier with respect to goods carried on deck with the permission of the shipper? A. Yes.

"Q. What, in general, is the responsibility of an ocean carrier with respect to goods carried on deck with the shipper's permission? A. The carriage on deck, then it falls outside the Hague Rules and the Norwegian carriage of goods by sea Act, and therefore is covered by the Maritime Code.

"Q. And what does the Maritime Code provide with respect to that? A. The shipper and the master of the ship should use ordinary case in stowing and transporting the deck cargo. There is no special rule, but on the other side there is complete freedom of contract, and the shipowner may contract out of his responsibility for deck cargo.

"Q. Then do I understand that in your opinion, a carrier may under the law of Norway by contract (240) exonerate himself from all responsibility for cargo carried on deck with the shipper's permission? A. For all responsibility as far as the faults of the master and the crew are concerned. As far as his personal faults are concerned, I think the Norwegian Court would not accept a limitation of liability for his wilful causation of damage, or for cases of gross negligence. The last point is not quite clear, but I think there is no clear authority on that point, it is the general opinion in the doctrine."

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(241) * * *

"Q. Doctor, there is nothing in the law of Norway which relieves Norwegian vessels and Norwegian carriers of ob-

ligations imposed upon them by the laws of foreign states into whose waters they trade, is there? A. There is no special rules."

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(242) • • •

"Q. The fact that a particular commodity is not mentioned by name in any regulations concerning loading or stowage does not in Norwegian law relieve the carrier of its obligation to load and stow that cargo carefully, does it? A. No, it does not.

"Q. Naphthalene is inflammable, is it not? A. Yes."

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(246) • • •

Deposition of PEDRICK D. HERLOFSEN.

Mr. Zisgen: The next deposition, your Honor, was that of Pedrick D. Herlofsen. • • •

"Direct examination by Mr. Pyne:

"Q. Mr. Herlofsen, where do you reside? A. Oslo.

"Q. And what is your occupation, Mr. Herlofsen? A. I am shipowner.

"Q. And as a shipowner, do you have an association or connection with any particular firm, (247) corporation, limited society or steamship company of any kind? A. I am one of the directors of Sigurd Herlofsen & Co. A/S.

"Q. Will you tell us whether that company is a corporation, limited society, partnership, and where its principal office is? A. It is a limited company, with principal offices in Drammensveien 88b.

"Q. Is that the premises where we now are? A. Yes, that is right.

"Q. What, please, is the type of business that is done by that company? A. That is, in short, shipowning business.

"Q. And do they act as an agent or manager for owners or vessels? A. They act as managers for all the companies that own ships in our concern.

"Q. That is, all the companies that do business through Sigurd Herlofsen, for those companies or vessel owners Sigurd Herlofsen & Co. A/S acts as a manager, as you call it? A. Correct.

"Q. And as a manager, will you tell us precisely (248) what type of thing they do for the shipowner? A. Well, they do all the work necessary with regard to operations of the ships.

"Q. And, for example, what would that be? A. For example, at Sigurd Herlofsen & Co's office they employ the crew, they arrange the insurance, arrange repairs, maintenance, chartering, new building contracts, bylaws, etc.

"Q. Do you know who the owner was of the motor vessel named and called the "Black Gull", who the owner of that vessel was in June and July, 1952? A. That was Skibs A/S Jolund registered in Moss, Norway.

"Q. And is that company, which you have just mentioned as being the owner, a corporation, limited company or partnership? A. A limited company.

"Q. Are you personally in any way connected with that company? A. Yes.

"Q. In what way or capacity? A. Since 1931 I have been a member of the Board, and since 1953 I have been Chairman of the Board.

"Q. And when you say Board, are you referring (249) to the Board of Directors of that vessel owned by that

company that you mentioned, that limited liability company of Moss? A. Yes."

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"Q. I am going to show you another document, but I first will ask the reporter to mark it as an exhibit for identification. I am going to show you a document which has just been marked 'Jolund Exhibit 10, today's date' and I will ask you if you can identify that document? A. Yes, that is a copy of a charter party between Skibs A/S Jolund and Black Diamond Steamship Corporation.

"Q. The date of it is what? A. 3rd September 1949.

"Q. And I notice down at the bottom there are some initials. Can you tell me whose initials they are? A. The one on the left is S. H., my father's initials.

"Q. And you father's full name? A. Sigurd Herlofsen.

"Q. And at the time of that charter, what connection (250) did your father have with Sigurd Herlofsen & Co.? A. He was the managing director of Sigurd Herlofsen & Co.

"Q. And is your father now deceased? A. He is deceased.

"Q. At the time this charter was made you, however, were connected with the company? A. I was director in Sigurd Herlofsen & Co.

"Q. As of today you are the managing director of Sigard Herlofsen & Co.? A. Correct."

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"Q. What does the owning company, which for short I will call Jolund, actually do? A. The company itself is not active in business as long as the management is left to Sigurd Herlofsen & Co. A/S."

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Deposition of Pedrick D. Herlofsen--Direct

(251) • • •

"Q. When you say they are not active, what passes, if anything, back and forth between the owner company Jolund for short, and Sigurd Herlofsen & Co.? A. I can put it this way. All remittances coming in for any earnings made by the vessels owned by Jolund, goes into Jolund's account. All payments made for disbursements are made out of Jolund's account, but everything is supervised by Sigurd Herlofsen & Co., and the Board of Directors of course every year in the Jolund agree the yearly account and all the statements."

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(253) • • •

"Cross examination by Mr. Zisgen:

"Q. Mr. Herlofsen, how long have you personally been connected with the shipping business? A. Since January, 1929.

"Q. You agree, do you not, that fire is a constant threat to any ship? A. Yes, we have seen samples of that.

"Q. And you agree, do you not, that any prudent ship operator must continuously take precautions against the outbreak of fire on ships? A. The Norwegian laws in that respect was very strict. We have always followed the laws of ship control and the classification institute.

"Q. And apart from the requirements of law, it is a fact, is it not, that the interests of ship operators (254) themselves require them to take all possible precautions against fire on board their ships? A. Yes, that is correct.

"Q. And to take those precautions continuously? A. Yes, that is correct."

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Deposition of Pedrick D. Herlofsen—Cross

"We are engaged as Managing Owners of the Jolund at a stipulated fee per annum, but always subject to the provisions of the Shipping Company Act."

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"Q. Mr. Herlofsen, in June or July 1952, did Sigurd Herlofsen & Co. have any financial interest in Skibs A/S Jolund? A. That I cannot tell, but I know that I personally, my father and my partner had a financial interest.

"Q. That is, you, your father and your partner constitute all the owners of Sigurd Herlofsen & Co.? A. Not at that time. My mother had shares at that time.

(255)

"Q. Excluding your mother, you, your father and your partner all had a financial interest in Jolund? A. No, in Herlofsen.

"Q. No, my question was first of all, had Herlofsen a financial interest in Jolund, and you told me you did not know. A. No, I don't remember.

"Q. As at the same time, did you personally have an interest in Jolund? A. Yes.

"Q. Do you know whether your father had or not? A. Yes.

"Q. Do you know whether your father's partner had or not? A. He did.

"Q. And do you know whether your mother had or not? A. That I do not know."

Then I skip two or three questions:

"Q. Was the extent of your majority—and I mean you, your father and your partner—such that the three of you together could outvote all other stockholders, whether holders of preferred shares or common stock? (256) A.

I cannot answer that, but I think it is correct what you say.

"Q. And both you and your father at that same time, June and July, 1952, were directors of Jolund, were you not? A. That is correct.

"Q. Your father was the Managing Director? A. He was Chairman of the Board.

"Q. Was there a Managing Director? A. Well, I think I answered that question saying he was Chairman of the Board, which I mean to be Managing Director."

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"Q. And was your partner also a director in June and July, 1952? A. He was.

"Q. How many directors were there of Jolund at that time? A. I think there was five.

"Q. And Sigurd Herlofsen, does it only have four partners? A. Three partners.

"Q. I thought you said your mother? A. She had shares, but was not on the Board of (257) Directors.

"Q. Only you, your father and your partner as directors of Sigurd Herlofsen & Co. A/S in June-July 1952? A. No, my father was dead at that time.

"Q. So there were only the two of you? A. Correct.

"Q. And I take it that the whole financial interest in Sigurd Herlofsen & Co. at that time was vested in the estate of your father, in yourself, in your mother and in your partner? A. That is correct."

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"Q. You do know, do you not, that the 'Black Gull' in June and July, 1952, had accommodations for a number of passengers? A. Yes.

"Q. And in the charter party Jolund Exhibit 10 for identification you granted permission to the charterers to carry passengers? A. Correct.

"Q. You anticipated that the charterers would probably avail himself of that permission? A. Yes.

(258)

"Q. Did you know in June and July, 1952, that passengers had been carried on the 'Black Gull' on previous voyages under the charterer? A. I know the ships have carried passengers, but I cannot remember whether that was before or after she entered the Black Diamond service."

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"Q. Did you understand that Sigurd Herlofsen & Co. relied on the master of the ship to see that cargo which was forbidden by the charter was not loaded? A. We relied on the captain to that extent."

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(260) • • •

"Q. Now, you know of course that the 'Black Gull' in operating for Black Diamond Steamship Corporation under this charter, would operate in ports of Germany, Holland, Belgium and the United States? A. Yes, we did.

"Q. And you knew that each of these countries had, or might have, laws regarding the operation of the ship? A. Yes.

"Q. And you knew that each of these countries might have laws with respect to what cargo could be carried, did you not? A. Yes. That was why we could not issue any instructions here.

"Q. And you knew that each of these countries had, or might have laws, with respect to the manner in which certain cargo could be carried, did you not? A. Yes.

"Q. What familiarity did you or Sigurd Herlofsen & Co. have in June and July 1952 concerning any of those laws, Mr. Herlofsen? A. We were not familiar with the different countries' laws to any extent.

"Q. Well, had you at that time made any effort (261) to find out what those laws required? A. No; I do not think we had.

"Q. You personally had not, I take it? A. I personally had not.

"Q. And so far as you know, neither anyone in the office of Sigurd Herlofsen & Co. had? A. They might have learned things I did not know about, but I cannot answer that question.

"Q. The company, as a company, had made no effort to familiarize itself with those laws, is that correct? A. That, I believe, is correct.

"Q. You knew that on every voyage the vessel would touch at U. S. ports? A. Oh, yes, definitely.

"Q. Did you or Sigurd Herlofsen & Co. have a copy of the U. S. Coast Guard Regulations concerning the transportation of explosives and other dangerous goods? A. We might have, but not to my knowledge.

"Q. You personally have never seen it? A. I have never seen it.

"Q. You personally have made no effort to obtain them? A. No."

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(262) • • •

"Q. • • • You told us that you knew that passengers would be carried on the 'Black Gull'? A. Yes.

"Q. And you said, I think, that you probably were aware that they had been carried on voyages of the 'Black Gull' prior to June July, 1952? A. I believe I answered that question saying that I knew passengers had been carried on 'Black Gull' but I could not say whether it was before or after the time charter with the Black Diamond.

"Q. • • • In selecting the officers of the vessel, you did not refuse to employ officers who smoked, did you? A. That is a question you cannot ask an officer, and I do not

think you have a legal background to refuse to hire a man because he smokes.

"Q. Well, whether you have a legal right to do so or not, you did not in fact limit your selection of officers or crew to men who did not smoke, did you? A. Then I would not be able to man the ship.

"Q. The answer, I take it, is no? A. That is correct.

"Q. And so far as you know, there were no regula-
(263) tions on your ships forbidding them to smoke on the ship. A. Most definitely there were. There was painted signs on the ship.

"Q. Forbidding the officers and crew to smoke at any time or place? A. Not particularly the officers and crew, but there was painted signs in certain places on the ship saying 'No smoking.

"Q. But those signs were not intended to forbid all smoking everywhere on the ship at all times? A. No, you could hardly expect that.

"Q. In other words, you anticipated that the officers and crew, and the passengers, might at some times and places smoke on the ship, is that not correct? A. We anticipated that, yes.

"Q. You provided ash trays in certain places? A. We did.

"Q. You set aside one room by name as a smoking room? A. Yes. That does not necessarily mean that there was only going to be smoking in that room, but so far as I can remember, we had printed or painted notices warning the passenger and the crew against (264) smoking.

"Q. But you did not, through instructions to your officers, endeavor to prevent all smoking on the ship? A. If we had instructed that there would be no smoking on the ship we would not be able to carry a single passenger.

"Q. Now, you did not limit the passengers, or attempt to limit them to one particular portion of the ship during

the voyage, did you? A. You mean limit the passengers' admittance to certain places on the ship?

"Q. That is right. A. As far as I know, we had a sign on all our ships saying 'No admittance on the bridge'.

"Q. But aside from that there was no strict regulation preventing them from going elsewhere on the ship than the bridge? A. I would take it for granted passengers would not be allowed to visit the crew's cabins.

"Q. And excluding the bridge and the crew's cabins, and perhaps the cargo holds? A. They were closed anyway.

"Q. The passengers were not prohibited from going elsewhere on the ship? (265) A. No.

"Q. And you anticipated that they might from time to time go other places than their sleeping cabins? A. Oh, definitely.

"Q. They might go forward on the main deck to look out over the bow, they might go aft on the main deck to look out over the stern? A. Yes.

"Q. That you anticipated? A. Yes.

"Q. You did not fence off any part of the main deck to prevent them physically from going on it, did you? A. There was no instructions from here, but I would take it for granted that if the ship had deck cargo the passengers would not be allowed to walk on the deck cargo.

"Q. To walk on it? A. Yes.

"Q. But if they did not walk on it, they might go beside it? A. That all depends on the nature of the deck cargo.

"Q. What difference would the nature of the deck cargo make? (266) A. Well, I would say, first, if you carried a deckload of lumber, it might be dangerous for the passenger to get close.

"Q. Because of the danger that it might fall on them? A. I should say so—that is just my guess.

"Q. I take that that you left largely to the master's discretion? A. Obviously, yes.

"Q. You did not provide any sandboxes or things of that sort on the open decks of the 'Black Gull' for the extinguishing of cigarettes or cigars? A. That would be quite contrary to our instructions, for our instructions for passengers, to smoke on deck.

"Q. Well the answer is that you did not? A. We did not, to the best of my knowledge."

• • • •

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried, was vested in the (267) master and in Black Diamond? A. I would say vice versa—Black Diamond and the master."

And then at the top of page 39:

"Q. And then, in the hierarchy of Sigurd Herlofsen & Co., the master is the person with the highest authority to determine these things? A. Because he is the only man who can do so, being on the spot.

"Q. And there is no one higher than he in Sigurd Herlofsen & Co. who can exercise that authority? A. No, I do not think there is, according to Norwegian law.

"Q. Whether as a matter of law or not, as a matter of practice it was the master who was the highest ranking employee of Herlofsen & Co. who determined, or at least exercised a veto power over the acceptance of cargo and its stowage? A. Yes, that is the only practical way of operation.

"Q. And that system did exist for the whole period of this charter? A. For the whole period of the charter."

(268) * * *

Deposition of Capt. Inge Svendsen.

This is part of the cross-examination of Captain Svendsen, * * *

"Cross examination by Mr. Zisgen:

"Q. You told us that you had never discussed what cargoes were carried on the 'Black Gull' or on any other vessel under charter to Black Diamond Line, and had never heard any discussion of what cargoes were carried on such vessels, did you not? (269) A. I do not know whether that is correct. I had never heard any discussion between the master of any of the vessels and any of the directors or the owners, rather.

"Q. How about discussions between the masters of such vessels and yourself, captain? A. Oh, yes, I knew definitely that naphthalene was carried.

"Q. And you knew that from the masters of the ships under charter to Black Diamond which carried it? A. Yes. On my trips I saw the naphthalene carried on deck.

"Q. And was the naphthalene which you saw carried on deck covered in any way? A. No.

"Q. On no occasion? A. On no occasion.

"Q. On how many occasions did you see naphthalene carried on deck on Herlofsen's ships chartered to Black Diamond, uncovered? A. Well, it will be very difficult to say exactly but I should think I have seen that at least ten or twelve times.

"Q. And were those ten or twelve times (270) which occurred during the period covered by the charter part of the 'Black Gull', which has been marked as Johnd Exhibit 11 for identification? A. Yes, I would say that during that period I would probably have seen it for at least ten times."

* * * *

"Q. Now, during the period from 1949 to 1952, when you were assisting Captain Wellton, did you on any occasion see naphthalene stored on deck of a Herlofsen ship chartered to Black Diamond, uncovered? A. Yes.

"Q. On how many occasions? A. Well, as I said, I would say about eight or ten occasions at least. Well, let us say ten occasions about.

"Q. Ten occasions during that period? A. Yes."

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(271) • • •

"Q. You, as Captain Wellton's assistant during that period, knew that Black Diamond was accustomed to carrying naphthalene in that fashion? A. Yes, I knew it."

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(359) • • •

FRITJOV ANDERSEN, called as a witness on behalf of Libelants, having been duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Longley:

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(360) • • •

Q. Captain, you live in Norway? A. Yes, sir.

Q. And you were master of the "Black Gull" on her last voyage? A. Yes, sir.

Q. You have never seen me before you took the stand here, have you? A. No, not til two days ago I saw you in court here.

Q. Oh, you were in the court when the case opened? A. Yes.

Q. And you never saw Mr. Zisgen (indicating)? A. No, sir.

Q. And neither he nor I have interrogated—that means questioned—you in any way about this case or anything else? A. No, sir.

Q. We never talked with you in any way? A. No.

Q. You have been brought to this country by the (361) owners or the former owners of the "Black Gull"? A. Yes, sir.

Q. To testify in this case? A. Yes, sir.

Q. How long had you been master of the "Black Gull" before her last voyage? A. I have been approximately two months master on the "Black Gull".

Q. Only two months. A. Yes, sir.

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(362) • • •

Q. Captain, how long have you had Norwegian Master's papers? A. From February 1946.

Q. And before that time you worked up through the grades, from third mate, second mate, first mate? A. Yes, sir.

Q. So how many years have you been at sea? A. I started at sea in 1922.

Q. 1922? A. Yes.

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(363) • • •

Q. Captain, going back to the last voyage of the "Black Gull", at the time of her stowage, the stowage was laid out by Captain Hollaar of Black Diamond Steamship Company, was it not? A. Yes, sir.

Q. She loaded at the two German ports of Hamburg and Bremen first, did she not? A. Yes, sir.

Q. And there general cargo was stowed in her holds? A. Yes, sir.

Q. And then she proceeded to Antwerp? A. Yes.

Q. And there other general cargo was loaded in her holds? A. Yes.

Q. And naphthalene was loaded on the ship's decks, (364) is that not correct? A. Yes, sir.

Q. The stowage of the naphthalene on deck was laid out by Captain Hollaar, as to where and how it was to be stowed, is that not true? A. Yes, sir.

Q. And then he showed you how he planned to stow the naphthalene, did he not? A. Yes, sir.

Q. And you approved it. A. Yes, sir.

Q. Then the vessel proceeded to Rotterdam and at Rotterdam——

(Witness nods head)

Q. Answer audibly, Captain, if you will. A. Yes.

• • • •

Q. And at Rotterdam, in addition to general cargo, some more naphthalene was stowed on the ship's decks? (365) A. Yes, sir.

Q. Captain, how many tons of naphthalene were stowed on the decks of the "Black Gull"?

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(366) • • •

Q. Captain, I lay before you a stowage plan heretofore marked Libelants' Exhibit 11-A, which you may examine at any time you wish (handing to witness). A. Thank you.

(The interpreter speaks with the witness.)

Q. Now, can you tell us first, Captain, how many bags of naphthalene were stowed at Antwerp?

(Witness examines)

Q. And the tonnage that was then there stowed on the deck, if you can get it from that plan. A. There was on the aft deck abeam of No. 4 hatch, was 605 bags, approximately 61 tons.

Q. Approximately how many tons? A. 61.

Q. 61 tons? A. Yes.

Q. And how many tons were stowed forward? A. That was all stowed on the after deck, 61 tons at Antwerp.

Q. There were only 61 tons stowed aft at Antwerp? A. Yes.

(To the interpreter) Yes.

(367)

Q. And then at Rotterdam how many bags and how many tons of naphthalene first were stowed on the after deck? A. On the after deck was stowed 210 bags of naphthalene, 203 tons.

Q. Now, there is something wrong. A. No, 2,010 bags.

Q. 2,010 bags weighing 203 tons? A. Yes.

Q. And where on the after deck were those bags stowed? A. That was stowed further back from the naphthalene from Antwerp.

Q. And how many bags and tons of naphthalene were stowed forward at Rotterdam? A. 3,333 bags, 305 tons.

Q. So that when you eventually sailed from Rotterdam the only naphthalene you had forward were those 3,333 bags stowed at Rotterdam? A. Yes, sir.

Q. While aft you had the 2,010 bags—was it— A. Yes, sir.

Q. —stowed at Antwerp—and what was the other number of bags? A. 605.

(368)

Mr. Pyne: 605 bags stowed at Antwerp.

Q. Yes, 605 bags stowed at Antwerp and 2,010 bags stowed at Rotterdam. A. Yes, sir.

• • • •

Q. Captain, I lay before you an outline plan of the "Black Gull", marked Libelants' Exhibit 17 (handing).

Now, there has been considerable talk here about Hatch No. 4. Now, under your terminology—I guess that is not a good word—under your language, of the ship, is hatch No. 4 the forward hatch in the after well? A. The forward hatch on the after deck.

Q. On the after deck, yes. And then the next hatch after that is what you call the No. 5? A. Yes, sir.

Q. Now, on this plan up here in the weather deck, there is some drawing that I don't understand. What is that (indicating)? A. That is some erection that we used on tropical waters for awnings.

Q. That was not in existence on this voyage? (369) A. No, sir.

Q. And then at this point (indicating), immediately aft of this drawing of a boat (indicating), is that the aft structure? A. Yes, that's the end of the boat deck.

Q. The end of the boat deck? A. Yes, the midship structure.

Q. Now, dealing with this deck, the after weather deck, tell us in relation to this bulkhead, which you tell us is in the after limit of the boat deck, where the stow of naphthalene was. Did it go up against this bulkhead? A. No, they were free of the bulkhead. It was aft of these bitts here (indicating)—it should be about 2 foot, 1½ foot, after these two bitts here (indicating), so it would be free.

Q. There was a space, then, between the forward stow of naphthalene and these stairs that I see delineated here on this plan? A. Yes, sir.

Q. About how much space? A. I should say about two or three feet at least.

Q. And when I just spoke of these stairs, I am pointing to the stairs appearing on the—what do you (370) call this—going from the boat deck down to the main deck, shown on this second drawing here, down from the top, on this Libelants' Exhibit 17.

Now, dealing with that stow, Captain, starting, say, two feet aft of these stairs— A. Three feet.

Q. —or three feet aft of these stairs, there was a solid stow of bags, was there not, from the bulwarks toward the hatch coaming except for a passage? A. There was from the bulwark which went about three feet from the hatch—there was a solid stow.

Q. And how high was that stow, Captain? A. I can say about six feet.

Q. And what was the distance from the bulwarks to the hatch coaming—there was some suggestion made here of 17 feet. Would that be about right? A. I think that is close.

Q. So that leaving three feet for the passageway— A. Yes.

Q. —would leave a stow of approximately 14 feet— A. Yes, sir.

Q. —from the bulwarks inboard? A. Yes.

Q. Now, how far aft did that stow of naphthalene (371) extend? A. The whole naphthalene started from here (indicating) and went right up to the front (indicating).

Q. You are now referring that it extended on the port side by No. 4 hatch and— A. Facing that.

Q. What is this here (indicating)? A. That is a masthouse.

Q. And a masthouse, and by No. 5 hatch? A. Yes, sir.

Q. How close to the poop did the stow of naphthalene extend? A. It was about the same passage in the aft part, or close to the poop as it was to the boat deck.

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(372) • • •

Q. So the stow aft at port, meaning the stow of naphthalene bags, some 13 feet in width and 6 feet high, extended from a point approximately 3 feet aft of the ladder forward to a point approximately 3 feet forward of the ladder going up to the deck over the poop? A. Yes, sir, approximately.

Q. Now, did that same condition apply on the starboard side, Captain? A. Yes, sir.

(373)

Q. Again you had a solid stow of naphthalene from a point approximately 3 feet aft of the ladder shown in this drawing— A. Yes.

Q. —to a point approximately 3 feet forward of the ladder aft extending up to the deck over the poop? A. Yes, sir.

• • • •

Q. Now, Captain, there was no covering of any kind over the naphthalene, with the exception of (374) rope slings, isn't that true? A. Right, sir.

Q. And it is true, is it not, that you had carried naphthalene on the deck of other ships on which you had been master, where you had been sailing under charter to Black Diamond, stowed in the same manner as on the "Black Gull"? A. Yes, sir.

Q. Can you tell us how many times? A. Should be about 15 or 20 times.

Q. Over a course of how many years, Captain? A. It should be over—since 1949—that is three years, two and a half or three years.

Q. And in each case that stow of naphthalene on deck uncovered was set out by the superintendent of Black Diamond and reached—or rather had your approval? A. Yes, sir.

Q. I spoke of the alleyway of approximately three feet wide; that extended on the port side the whole length of the stow of naphthalene, did it not? A. Yes, sir.

Q. Was there a like alleyway on the starboard side or just on the port side? A. On both sides, sir.

(375)

Q. On both sides? A. Yes.

Q. What was the purpose of leaving that alleyway, Captain? A. That was for the passing of the crew.

Q. The passage of the crew? A. Yes, and keep clear of the hatches.

Q. Now, let me see, Captain, how many members of the crew did you have? A. We were 40 all together.

Q. And how many of them were officers? A. Ten officers.

Q. The quarters of the officers were in the midship structure? A. Yes, sir.

Q. So you had 30 crew men who lived in the poop? A. No, sir.

Q. Well, where did they live? A. Most of the deck crew and the engine crew lived aft but we had a steward's department that lived midship?

Q. What? (Answer read)

Q. How many crewmen were there that lived aft in the poop? (Interpreter speaks to witness.) A. 22.

(376)

Q. Those 22 men, to get to their work, necessarily walked through these passages to which I have referred? A. Yes, sir.

Q. And every change of the watch you would have men of the crew walking backward and forward through those passageways, would you not? A. Yes, sir.

Q. You told us that you had carried naphthalene un-

covered on—what did you say, a dozen or fifteen prior voyages? A. No, more than fifteen.

Q. Fifteen, I guess you did say that.

The Interpreter: Fifteen to twenty, he said.

Q. Fifteen to twenty, and on all those voyages the stow of naphthalene remained uncovered during the whole of each of these voyages, did it not? A. Yes, sir.

Q. And—did you want to add something, Captain? A. Except on a few occasions we were informed from the sh' per of the consignment of naphthalene that they wanted their naphthalene covered against water——

(The interpreter speaks with witness.)

The Interpreter: "—except that on a few (377) occasions the shippers of the naphthalene wanted the naphthalene covered and they supplied tarpaulins for that purpose.

The Court: He said "covered against water."

The Interpreter: Yes.

Q. With the exception of those instances the naphthalene remained uncovered during the whole of the voyages of your ships on these prior twenty occasions?

(The interpreter speaks with the witness.)

A. Yes.

The Interpreter: "They remained uncovered."

Q. And so far as concerns the last voyage of the "Black Gull", the naphthalene was uncovered when it was stowed and it remained uncovered from the time the ship sailed from Rotterdam up to the time of the fire? A. Yes, sir.

Q. And there was no intention to cover it at any time up to the time the vessel arrived in the port of New York? A. We never arrived in New York.

Q. What? A. We never arrived in New York.

Q. I know you did not.

Mr. Longley: I guess I had better rephrase my question.

(378)

The Court: Start again.

Q. If the five had not occurred and you had proceeded into the Port of New York, you would have continued to carry the naphthalene on the deck of the "Black Gull" into the Port of New York still uncovered? A. Yes, sir. But in case of objections we had some tarpaulins on board to cover the cargo.

Q. What was that?

(Answer read)

(Interpreter speaks with witness.)

The Interpreter: "In case there would have been any objections from the port authorities at New York we had tarpaulins on board to cover the naphthalene if necessary."

Q. But if no port authority came on board and told you to cover it, you had no intention of covering it?

(The interpreter speaks with the witness.)

(Question read)

A. I will try to say it in English. Every trip coming to New York, there were surveyors coming on board for the cargo, and if they brought up these things the cargo would be covered.

Q. Well, surveyors, Captain, are not officials.

(379)

Now, let me deal with these prior twenty occasions when you brought naphthalene into American waters; on not one of those occasions did you cover it with tarpaulins, except in those instances where the shippers asked to have their shipments covered with tarpaulins because they wanted to keep it free of water.

Mr. Pyne: May I interject here, your Honor? Mr. Rein is thoroughly familiar with English and Norwegian. He tells me that it is obvious here they are talking about surveyors and port authorities, and he says he is obviously mixed up here.

Now, in this examination——

The Court: But in this case there wasn't any question of a surveyor.

Mr. Pyne: I would suggest the question be put as the interpreter put it in exact Norwegian and take the answer in Norwegian.

The Court: I think that is the best way to do it.

Will you, Mr. Interpreter, repeat the question in Norwegian and then repeat to us every word that the witness says to you?

The Interpreter: All right.

The Court: Will you read the question?

(380)

(Question read)

(The interpreter speaks with the witness.)

A. (Through the interpreter) No.

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receive an itinerary from Black Diamond? A. (In English) Yes.

(Through the interpreter) Yes.

Q. And that itinerary handed you by Black Diamond directed you to sail directly from Rotterdam to New York? A. (Through the interpreter) Yes.

Q. And then what was your next port of call—in what order?

(Witness speaks with interpreter.)

Q. The ports of destination of the cargo were Boston and Philadelphia, Captain? (381) A. (In English) Then we should call at Philadelphia and then Boston.

Q. On your westbound voyages did you always sail from Rotterdam to make New York as your first port of call? A. (In English) Yes, sir.

Q. I suppose that is because most of your cargo was consigned to New York, isn't that it? A. (In English) Yes, sir.

• • • •

Q. You have sailed into the Port of New York a number of times before this voyage, the last voyage of the "Black Gull", have you not? A. (Through the interpreter) Yes.

(382)

Q. And as you approached the Port of New York, the first thing you do is to pick up the pilot, isn't that so? A. (In English) Yes, sir.

Q. And the next thing you come to anchor and take on board the Health Authorities? A. (In English) Yes, sir.

Q. Neither the pilot nor the Health Authorities have anything to do whatever with the stowage of the cargo, have they? A. (In English) No.

Q. And then you take on the Immigration officers, do you not? A. (In English) Yes.

Q. And they have nothing to do with the stowage of cargo? A. (In English) No.

Q. And then you proceed to your port—I mean your wharf where you discharge cargo, isn't that right? A. (In English) That's right.

Q. You don't have any Government official on board your ship, do you, other than those I have mentioned? A. (In English) Other than Customs and Immigration (383) and the pilot? That should be all coming on board.

Q. What? A. (In English) That should be all coming on board.

Q. Then there never is any Governmental official that comes on your ship that has anything whatever to do with the stowage of cargo, isn't that so? A. (In English) Not at Staten Island, Quarantine Station.

Q. But thereafter, after you have left the Quarantine Station and come up to your pier and you start the discharging of cargo, there is no Governmental official that comes on board your ship, is there?

(Interpreter talks with witness.)

A. (In English) The Customs officer comes on board.

(Through the interpreter) The Customs officer comes on board.

Q. He has nothing to do with the stowage of cargo, has he? A. (Through the interpreter) No.

(Witness speaks with interpreter.)

A. (Through the interpreter) When we arrive at New York there is somebody from the Public Health Service

who comes on board and checks in regard to cargo, whether there is any dangerous cargo on board.

(384)

The Witness: (In English) No.

(The interpreter speaks to the witness.)

The Interpreter: "Not dangerous, as to what kind of cargo we have on board."

Q. That is, how it may affect the health of the Port of New York. A. (Through the interpreter) Yes.

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(386) • • •

Q. Captain, have you prepared that summary of the temperatures (handing to witness)? A. (In English) Yes, sir.

Q. Now, where were those temperatures taken, Captain? A. (In English) It was taken on the bridge.

Q. In the shade on the bridge? A. (In English) In the shade, yes.

Q. You have no record of the temperatures out in the sun? A. (In English) No, sir.

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(392) • • •

Q. And then at what hour was it that fire broke out in your cargo, Captain?

Look in your log book any time you wish. A. (In English, after examining) It was about 2300, a little after 2300.

Q. And what was the position of your ship at that time by latitude and longitude? You have it in your log book, I believe, Captain. A. (In English) No. I haven't got it. I have in there an abstract.

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(393) • • •

Q. Well, getting to the point, what was the position of the ship?

The Interpreter: The position at that time was 40 degrees 30 minutes north latitade, and 71 degrees west longitude, according to the Captain's estimate.

Q. Captain, where were you when the fire broke out? A. (In English) I must have been in my cabin.

Q. Did somebody come and advise you of it? A. (In English) The third officer advised me.

Q. By coming to your cabin? A. (In English) Yes.

(394)

Q. And then what did you do, Captain?

Mr. Pyne: May we have an answer to that question "By coming to your cabin"?

(Record read by the reporter)

Mr. Pyne: Thank you.

A. (In English) Then I ran out on deck, on the bridge, and had a look to where the fire was.

Q. What did the third mate tell you when he came to your cabin? A. (In English) The exact words I can't tell, but he said there was fire in the naphthalene bags on the port side.

Q. So you immediately went to the bridge and you went out on the flying bridge on the port side, did you? A. (In English) I went out on the lower bridge and I ran over on the sun deck, I think, and saw the smoke and the fire.

Q. Where was it burning? A. On the port side of No. 4 hatch.

Q. In relation to the bulwarks and the hatch coaming,

where was it? It was about halfway between, Captain? A. (In English) Yes, about halfway between, I (395) can say that but it looked like this (demonstrating), and then I had to run up on the bridge again.

Q. I did not understand that.

The Interpreter: "I just had a quick look and then I ran up on the bridge again."

Q. Now go on, Captain, and tell us just what you did and what you saw in relation to this fire. A. (In English) I saw dense smoke, dark——

The Witness: Can I take it in Norwegian?

Mr. Pyne: Oh, yes, questions and answers both in Norwegian.

(The witness speaks with the interpreter in Norwegian.)

A. (Through the interpreter) I saw very dark smoke and little flame, and then I immediately ran back to the bridge and asked the man at the helm to put the rudder hard to port, stand by in the engine room and slow speed, signals with the whistle, and straightened the ship as to the course when we got the wind on the starboard side.

* * * *

(397) * * *

Q. And that operation of pouring water out of the four hoses onto the after cargo where the fire was burning started within a very short time after the fire broke out, isn't that true? A. (Through the interpreter) Yes.

Q. You found it impossible to extinguish the fire, did you not? A. (Through the interpreter) Yes.

Q. Now, the fire spread from its initial point where it broke out, outboard from the No. 4 hatch? A. (Through

Q. And it spread forward, too, didn't it? A. (Through the interpreter) Yes.

Q. And then it spread over on the starboard side of the deck load of naphthalene, isn't that so? A. (Through the interpreter) Yes.

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(399)

Q. You agree, do you not, Captain, that there was no cargo in No. 4 tweendeck that could have caused this fire which you found in the naphthalene? A. Yes.

Q. And there was no electric connection in the vicinity which might be defective which could have caused this fire? A. There were no electric connections in the tweendecks.

Q. And there were no electric connections on deck in the way of No. 4, either, were there?

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A. No, not in the vicinity.

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(400) • • •

Q. Do you or do you not know whether this commodity naphthalene is susceptible to spontaneous combustion? A. No, I do not.

Q. You do not know? A. No. As far as I know, it is not liable to spontaneous combustion.

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(401) • • •

Q. Captain, isn't it true that the naphthalene melted into a liquid during the course of the fire? A. Yes.

Q. And this burning liquid flowed over the after deck of the "Black Gull", did it not? A. Yes.

Q. You arranged to have your vessel given a list to

port so that this molten flaming liquid would pour overboard; isn't that true? A. Yes.

Q. Then the fire communicated itself to the midships accommodations, that is, the bridge, didn't it? A. Yes.

(402)

Q. And then the fire was communicated to the naphthalene on the forward well deck? A. Yes.

Q. And then you and your men were forced to the forecastle head, were you not? A. Yes

Q. And the naphthalene on the forward deck melted and became a fiery stream of liquid, didn't it? A. Yes, the naphthalene commenced to burn on the forward deck. and it probably melted also.

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(404) • • •

Q. When did the Coast Guard cutter with you on board leave the scene of the disaster? A. Late during the afternoon.

Q. That was during the afternoon of the 19th? A. Yes.

Q. During that period, during all the morning of the 19th, and up to the late afternoon, the "Black Gull" continued to burn from stem to stern? A. Yes.

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Q. You had on board your vessel a messboy named Joseph Verbeeck; do you remember him? A. Yes, I remember him.

(405)

Q. He lost his life in this disaster, did he not? A. Yes.

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Q. Captain, when you took this naphthalene on board at Antwerp and Rotterdam, did you have any conversa-

tion with Captain Hollaar about it? A. Yes, there was always a conference in regard to the cargo.

Q. What did Captain Hollaar tell you about it? A. There was nothing especially said about it except that we were going to load so much naphthalene and where it was to be placed.

Q. Did Captain Hollaar give you any warning or recommendations as to the dangers which this cargo presented? A. No, but we were so used to carrying naphthalene that we knew how we were to handle it.

(406)

Q. That is, you knew you were to stow it on deck without any covers? A. Yes.

Q. Captain, it is true, is it not, that you did not think this cargo was particularly inflammable? A. No, it is not very inflammable.

Q. When this fire broke out with the result you have described here, that came as a great surprise to you, Captain? A. Yes.

Q. Did you make any study of any regulations as to the subject of naphthalene which might have been issued by any country, whether it be Belgium, Holland or the United States?

The Interpreter: May the question be read.

(Question read.)

The Interpreter: You said after this?

Mr. Longley: I did not say anything about after this, no.

Mr. Pyne: I think the question should be read.

(Question interpreted to witness by interpreter.)

A. I can't remember exactly what I have read about naphthalene, but I have read something about it, but I

don't remember exactly now. I have read more about it later.

Q. In any event, as of the time you sailed on (407) this voyage, Captain, you had no knowledge of any particular precautions which should be taken to guard this cargo against fire? A. I have read the Coast Guard regulations and the Norwegian Sea Control rules, and other books in regard to it.

Q. What knowledge did you secure from your reading, Captain, as to the dangers which this cargo presented? A. That it is considered as a hazardous cargo in the United States.

Q. That is all you knew about it, Captain?

Mr. Pyne: The whole answer has not yet been completed.

Mr. Longley: Let us get it completed.

Mr. Pyne: Maybe we better have it read.

(Last record, with last two questions, read by reporter.)

Mr. Pyne: The witness was continuing.

A. (Continued) And that it should have a particular treatment.

Q. Have you got an additional answer you want to give, Captain?

The Interpreter: He asks if he can't wait (407a) a little.

Mr. Longley: Oh, yes. I did not mean to rush you, Captain.

The Court: We will take a short recess.

(Short recess.)

(408)

By Mr. Longley:

Q. When we adjourned, Captain, you wanted a ittle more time to think over an additional answer to the last question.

Will you give us any additional answer you wish to make?

Mr. Longley: Do you want to read the question, Mr. Reporter?

(Record read by the reporter.)

Q. Go ahead, Captain. Have you understood what the reporter has read, Captain? A. (In English) Yes.

Mr. Pyne: May we have the last question read without the interpolation—the question that is incompleted—if you will just let the reporter read it.

(Question read by the reporter.)

Mr. Pyne: Read the question which the witness was partially answering, what knowledge did he secure.

(Record read.)

The Court: Repeat the last question.

The Reporter: (Reading)

Q. What knowledge did you secure from your reading, Captain, as to the dangers which this cargo presented?"

The Court: Now will you interpret that?

(409)

(The witness speaks to the interpret .)

A. (Through the interpreter) I read already in 1949 when we commenced to carry naphthalene cargoes and

later we have carried naphthalene in the same way as we did on the first voyages, and that the American Coast Guard regulations say that the cargo should be protected.

Q. Is that all you want to say, Captain? A. (In English) Yes, sir.

Q. Only one other question I have to ask you, Captain. Showing you Libelants' Exhibit 17, which is the outline plan of the ship, that is, of the "Black Gull", you have told us that in this upper drawing, this structure here (indicating) was not on the "Black Gull"—and when I say "this structure here," if I may, I am going to line out with the letter "S"—will that be all right—(after marking) that structure which I have marked "S" was not on the "Black Gull" because that was merely used when the vessel was operating in the tropics, is that correct? A. (Through the interpreter) Yes.

Q. Now, you have told us that the stow of naphthalene came within about—how many feet was it? (410) A. (Through the interpreter) Three feet.

Q. Three feet from the base of this ladder right here (indicating). A. (Through the interpreter) Yes.

Q. Now, this line here (indicating), which I will mark with the letter "L"—(marking)—denotes the after end of the boat deck, does it not? A. (In English) Yes.

(Through the interpreter) Yes.

Q. Now, the passengers were expected to promenade when they wished to, on this boat deck, terminating at the aft line I have marked "L." A. (Through the interpreter) No, the passengers promenaded here (indicating).

(In English) On the lower bridge.

Q. Well, isn't this the boat deck (indicating)? A. (In English) Yes, sir.

Q. Didn't the passengers walk on the boat deck, too? A. (In English) Very seldom.

Q. But they were permitted to, Captain? A. (In English) Yes, yes.

Q. Then how high from the weather deck was that bridge deck? It looks as though it might be eight or nine feet; is that right?

(411)

The Interpreter: You mean the boat deck?

Mr. Longley: The boat deck down to the weather deck.

A. (Through the interpreter) Well, it was about seven to eight feet but there was also a bulwark around there.

Q. Yes, but anyone standing on the boat deck looking over the bulwark would look down on top of the stow of naphthalene, isn't that true? A. (Through the interpreter) Yes.

Q. And as the stow of naphthalene was approximately 6 feet high, the top of the stow would be about a foot or two below the level of the boat deck where a passenger might be standing, is that correct? A. (Through the interpreter) Yes.

Q. What speed did your vessel make, Captain, when it was going full speed? A. (Through the interpreter) 16½ miles.

Q. Then necessarily, Captain, anything which might be thrown from the boat deck or out a port hole of the passengers would flow aft, isn't that true? A. (Through the interpreter) It all depends on the wind, of course.

Q. Well, if you had no wind and the speed of your (412) ship would, in effect, make a wind of 16 knots, wouldn't it? A. (Through the interpreter) Yes.

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Fritjov Andersen—for Libelants—By the Court

By the Court:

Q. Captain Andersen, I am not sure that I understood your answers about what you knew about naphthalene.

The Court: (To the interpreter) Will you translate that, please?

(Interpreter speaks to witness.)

Q. (Continuing) Did you mean to say that before the last voyage of the "Black Gull" you had read in American Coast Guard regulations that naphthalene when carried on deck was to be covered? A. (Through the interpreter) No.

Q. When did you first get that information about the Coast Guard regulations? A. (Through the interpreter) In 1949 when we (413) first started to carry naphthalene, that was the first time that I learned about the Coast Guard rules.

Q. So that at the time of the last voyage of the "Black Gull", you knew that the Coast Guard regulations required that naphthalene, when carried on deck, be covered?

(Witness speaks with interpreter.)

The Interpreter: He says "I mean it should be protected, not covered."

Q. What does "protected" mean to you? A. (Through the interpreter) I mean by "protected" that there should be built a sort of a sun deck over naphthalene in such a way that it can be ventilated underneath that sun deck.

Q. There was no such sun deck provided on the "Black Gull," was there? A. (Through the interpreter) Because it is impossible to use it in the North Atlantic.

Q. So you think that it is impossible to comply with the

Coast Guard regulations in the North Atlantic? A. (Through the interpreter) In these specific instances, I mean that it is impossible to follow same in the North Atlantic.

Mr. Longley: I must confess that I couldn't (414) follow that last answer.

(Answer read by reporter.)

Q. Captain Andersen, I think you understand the questions that I have been asking you, and would you like to give any further explanation? A. (Through the interpreter) I think I stated what I meant.

The Court: All right.

* * * *

Chester A. Snell, called as a witness on behalf of libelants, having been first duly sworn, testified as follows:

Direct examination by Mr. Longley:

(415)

Q. Doctor, where do you live? A. 188 West Hudson Avenue, Englewood, New Jersey.

Q. And will you tell us in your own words your profession and your qualifications in that profession, giving your education and your general experience? A. I have attended New York University, Columbia University, Polytechnic Institute of Brooklyn.

I hold the degrees of Bachelor of Science in Chemistry, Master of Science in Chemistry and Doctor of Philosophy.

I taught chemistry for seven years at the Polytechnic Institute; worked as a research chemical engineer for the

Aluminum Company during the war; for the past ten years I have been employed by Foster D. Snell, Inc., consulting chemists and engineers where I am now an account executive in charge of the analytical department in the engineering department.

Q. Doctor, are you familiar with the characteristics of crude naphthalene? A. I am.

Q. Tell us in your own way what its chief characteristics are. A. Crude naphthalene is, as the name implies, only partially refined. It is obtained from coal tar, (416) so-called, middle oil of coal tar which is either expressed or centrifuged to remove a large amount of the liquid fraction, leaving a solid light or dark brown in color—depending on how crude it is—and containing from 8 to 20 per cent of oil.

The material, when pressed, will give off this oil. As a matter of fact, the method of determining how much actual naphthalene there is—wrap it up in a filler of paper, put it in a vise, squeeze the oil out and find out how much naphthalene is left.

The material is odoriferous, as practically everybody knows, because moth balls are made out of naphthalene and it has a melting point somewhat less than pure naphthalene—in fact, it is generally sold under a specification of melting point.

Pure naphthalene melts at 79 degrees Centigrade—that is about 174 plus Fahrenheit.

Crude naphthalene will be sold as 77 degrees, 76 degrees, depending on what the melting point is.

The flash point is also somewhat lower than that of pure naphthalene. Pure naphthalene, has a flash point, depending on the method used, whether it is open or closed cup, varying from 174 degrees Fahrenheit to 190 degrees Fahrenheit—in other (417) words, it flashes at just about its melting point.

By "flash point," I mean the temperature at which in

the presence of a flame there will be a flash of fire but not a continuous fire.

The fire point is a few degrees higher.

Q. Is the flash point of crude naphthalene—did I hear you say something less than that of pure naphthalene? A. It is slightly less, yes. The oils are more volatile than naphthalene itself, and reduces the flash point some. It depends on how crude it is, of course.

Q. What are the characteristics of crude naphthalene as to inflammability? A. It is very inflammable, particularly so in the presence of material that will act as a wick or burn. If you have naphthalene without any other material, it is a little difficult to ignite but if you have bagging or something like that, that will act as a wick, it is quite readily ignitible.

Q. There is evidence here, doctor, that some 2,715 bags of crude naphthalene weighing 254 tons were stowed on the after deck of a ship known as the "Black Gull"—the bags being burlap bags, and that (418) this naphthalene was stowed in a solid mass about six feet in height and extending fore and aft a distance of—I don't know how many feet—and that this stow of naphthalene packed in the burlap bags to which I have referred remained in open stowage on this vessel's deck during the course of her transAtlantic voyage in the month of July.

What would you expect under those circumstances, doctor, would be the condition of the burlap covers of this naphthalene as to inflammability? A. Well, it would depend to some extent on where they were in the stow. Of course, the ones in the lower tiers would have the weight of the bags above them pressing down and would squeeze more of the oil out in the bagging than the upper bags.

On the other hand, the upper bags would be exposed to the sun's rays and naphthalene sublimes, so that it

would be quite likely that part of the naphthalene would sublime into the bagging on the upper tier.

Q. I do not know whether the Judge knows or not, but I do not happen to know what the term "sublime" means, doctor. A. Sublime—sublimation is going from a solid (419) to a gas without melting.

Naphthalene doesn't go—doesn't necessarily melt before it becomes gaseous. As an illustration, there is the mothball again. You have to have gaseous naphthalene in the air before you can smell it and you know that the mothball doesn't melt, although you smell the naphthalene.

Q. You get the smell of mothballs, that is, naphthalene, at a very low temperature, will you not? A. Yes. Well, two things: It has a relatively high vapor pressure even at low temperatures and you don't need very much in the air to smell.

Q. Well, is it or is it not true that as the temperature of this commodity goes up, the escape of gases from it increases? A. Yes. The higher the temperature the greater the vapor pressure.

Q. You spoke of such a thing as bagging operating as a wick.

Now, I have told you what the conditions were on this ship. Will you explain under those circumstances just what you mean by the condition or the danger of a wick? A. Well, once the fire started, the naphthalene (420) exposed to the heat would melt and be absorbed by the jute, the bagging—it should act like a candle. You can take a candle and it won't burn unless you have a wick. Once you start the wick to burning, then the wax volatilizes and burns.

Naphthalene acts much the same way, although it will burn without a wick but not as readily.

Q. Dealing with this commodity, crude naphthalene, is it or is it not susceptible to spontaneous combustion? A. No, there is no spontaneous heating whatever.

Q. Naphthalene, that is, crude naphthalene stowed in burlap bags in the manner that I have described, would that be—I will better say would the danger of fire be presented if such a thing as a burning cigarette butt or a burning cigar butt should reach the stow? A. Oh, yes.

(421)

Q. How would that danger present itself? A. Well, from recent studies made by the fire marshal's office of California, it indicates that the cigarette when not being puffed on has a minimum temperature of 500° F.

Q. You say F., and you mean Fahrenheit? A. Fahrenheit. The melting point of naphthalene is well below 500° F., so that naphthalene in contact with a burning cigarette butt would melt and most likely catch fire.

Q. If a fire starts in a stow of naphthalene of the dimensions I have described to you, what can be expected as to the intensity of the fire and its spread? A. Well, given sufficient air it would spread very rapidly and it would be quite an intense fire.

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Q. These characteristics to which you have testified here, Doctor, is there any secret about it, or (422) are these characteristics widely known and published in various scientific works? A. Oh, they are included in any handbook of chemistry or organic chemistry books.

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(425) • • •

Deposition of PEDRICK D. HERLOFSEN

Mr. Pyne: The first one is Peter Didrick Herlofsen.

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(454) • • •

Cross examination by Mr. Ziegen:

"Q. Did Sigurd Herlofsen & Co. have any agents at the ports of Hamburg, Bremen, Antwerp or Rotterdam in June and July 1952? A. No agents that was connected with the Black Diamond Line service.

"Q. Did it have any agents at all? A. Naturally, when you come in with a tanker you have to appoint agents.

"Q. Did you not also have to appoint agents when general cargo ships of Sigurd Herlofsen & Co. were to enter a port? A. That should apply to the same thing. Any ship would have to appoint their own agents.

"Q. What was the situation with respect to ships chartered to Black Diamond Line? A. There the agency representation was completely in the hands of the Black Diamond Line.

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(474) • • •

"Q. Mr. Herlofsen, as I get the picture, Skibs A/S Jolund as a corporation did not itself have anything to do with the operation of the 'Black Gull'. A. No, that was left to Sigurd Herlofsen & Co.

"Q. Sigurd Herlofsen & Co. were in fact the operators? A. Correct.

"Q. Sigurd Herlofsen & Co. in turn had no agents which it directly appointed in the vessel's ports of call? A. Not for the Black Diamond ships.

Deposition of Pedrick D. Herlofsen—Cross

"Q. And that included the 'Black Gull'? A. Correct.

(475)

"Q. And it relied on Black Diamond Steamship Corporation or Black Diamond's agents to perform whatever had to be performed in the various ports of call on the ship's behalf? A. That is correct.

"Q. It relied on the Black Diamond Steamship Corporation or Black Diamond's agents and the master to see that only such cargo was carried as was permitted by the charter? A. Obviously, for the simple reason if we should have anything to say with regard to the stowage of cargo we cannot very well say it here, and accept and refuse cargoes that is booked up daily, almost the last hour before sailing.

"Q. In effect, the authority of the owner of the 'Black Gull' with respect to what cargo was to be carried, and how it was to be carried or stowed, was vested in the master and in Black Diamond? A. I would say vice versa—Black Diamond and the master.

"Q. And why do you prefer to put it in that order? A. Because I think it is the Black Diamond Line or their agents who supply the stowage plan to the Captain.

"Q. And in your opinion, it is Black Diamond Steam-
(476) ship Corporation which has the primary right to determine what cargo shall be accepted and what cargo shall be refused, and how the cargo accepted is stowed? A. They can determine that, always subject to the master's approval."

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(481) • • •

Deposition of CAPT. INGE SVENDSEN

Mr. Pyne: I have now the next deposition I would like to read, which is that of Captain Inge Svendsen. • • •

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(482) • • •

Direct examination by Mr. Pyne:

"Q. Where do you reside, Captain Svendsen? A. At Gamle Jkelsasveien 3, Grefsen, Oslo.

"Q. Do you hold any license from any Government Authority for Marine or vessel service? A. Yes. I hold a Master's license—a Norwegian Master's license.

"Q. And for how long have you held a Norwegian Master's license? A. For ten years, since 1945.

"Q. And does that license cover all oceans and waters? A. Yes.

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(483) • • •

"Q. If I understand you correctly, your last sea service was some time in the year 1953? A. Yes, that is correct.

"Q. And from that time down to now, what has been your occupation and service, and in whose employ? A. I have been employed at Sigurd Herlofsen & Co. in their Marine Department.

"Q. And has that been employment ashore? A. Yes, in the office here.

"Q. And here in their office at Oslo? A. Yes.

(484)

"Q. Prior to that service ashore, and in the office here in Oslo, did you serve on any vessels operated or managed

by Sigurd Herlofsen & Co.? A. Yes, I served on three vessels managed by Sigurd Herlofsen.

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(485) • • •

"Q. Your present duty or duties here in the employ of Sigurd Herlofsen & Co. A/S are what? Will you describe them for us? A. Well, at present, I am head of the Marine Department, and I have under me the Crew Department, engaging crew, and I am also naturally doing some work in connection with the survey of the vessels or maintenance of the vessels at the present time.

"Q. And when, as nearly by date, month and year as you can state it from your recollection, did you become head of the Marine Department of Sigurd Herlofsen & Co. A/S? A. January 1st, 1954.

"Q. Do you know who preceded you as head of that Department? A. Yes. Captain Wellton.

"Q. Do you know where Captain Wellton now is? A. Yes, he is here in Oslo."

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(487) • • •

"Q. Now, in the daily work here at Sigurd Herlofsen, will you tell us whether or not the organization is divided into departments, and, if so, what departments? A. Yes, in the daily work we divide in the Maritime and Technical Department, and we also have an Accounting Department. These three are the main division of the firm.

"Q. With respect to repairs or maintenance of vessels operated or managed by Sigurd Herlofsen & Co. A/S, do you have any duties, and have you had any duties or work to do, you personally? A. The repairs are divided. If it is strictly a technical matter it will be handled by our Technical (488) Department, but maritime matters, handling things that have to do with deck, then I have

had something to do with repairs and maintenance, and also survey or inspection or whatever you want to call it.

. . . . .

(489) . . .

"Q. In June and July 1952, were you then employed by Sigurd Herlofsen & Co. A/S? A. Yes.

"Q. And may I ask where at that time you were employed? A. I was in the Marine Department in the office in Oslo.

"Q. And for how long a period of time prior to June and July 1952 had you been in the Marine Department (490) at Oslo? A. I had been in the Marine Department at that time during 1951 and the first part of 1952, but I did work partly in the Marine Department for Captain Wellton also prior to that time, but I just had the work given to me by Captain Wellton. For instance, I might be sent out on a ship as a Captain, or anything that he thought he needed me for.

"Q. You just assisted Captain Wellton, in other words? A. Yes.

"Q. And having told us that you had last gone to sea in 1953, then you must have gone to sea some time after June/July 1952? A. Yes, I did. I went out as a relief Master in a tanker in 1953.

"Q. And that was your last actual sea service? A. Yes.

"Q. And then, when Captain Wellton retired, you took his position or place? A. Yes."

. . . . .

(506) . . .

Cross examination by Mr. Zisgen:

"Q. When did you first commence office work under Captain Wellton? A. The first time I had anything to do in the office was for a very short period in 1947.

"Q. When next did you have anything to do with the office side of the work? A. I were in the office part of 1948, also part of 1949, two months of 1950, most of 1951, and then up until 1952. I was the whole year in the office in 1952 and part of 1953.

"Q. Now, when you first came to the office in 1947, what was the nature of your work? A. I only assisted Captain Wellton in making up some average claims.

"Q. General average claims? A. No, particular average claims, statements of (507) claims.

"Q. That is, particular average to the vessels? A. Yes.

"Q. Then when you next came to the office to do office work, which was in 1948, what work did you do? A. Only such work Captain Wellton asked me to do. Actually nothing particular, only what he needed me to assist him on.

"Q. Well, would it be fair to say that during that period in 1948 you assisted him generally in the various duties which he performed as your predecessor? A. Yes, I assisted him in certain of his duties. Yes.

"Q. Now, coming to the next occasion, which was in 1949, what did you do? A. It was the same as in 1948.

"Q. And in 1950? A. The same thing.

"Q. And in 1951? A. The same thing.

"Q. And in 1952? A. Same thing."

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(508) • • •

Deposition of ALBERT ZIMMERMANN

Mr. Pyne: I should like to read, your Honor, from the deposition of Albert Zimmermann • • •

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(517) • • •

Cross examination by Mr. Zisgen:

"Q. Mr. Zimmermann, in surveying and classifying vessels Norwegian Veritas does not purport to deal with the stowage of cargo, does it? A. No."

Deposition of DR. SJUR BRAEKHUS

Mr. Pyne: The next witness, your Honor, was Professor Sjur Braekhus, • • •

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(531) • • •

Cross examination by Mr. Stonebridge:

"Q. • • • With respect to questions and/or answers concerning the Compensation Act of Norway, does it or does it not apply only to Norwegian citizens? A. It applies only to Norwegian citizens. There is Section 2, subsection 1: 'Aliens shall not be liable to insurance, nevertheless the Crown may conclude reciprocal agreements with other countries respecting compensation to seamen and their dependents.'

"Q. As between Norway and Belgium, has the Crown concluded any such agreement? A. No, it has not."

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(532) • • •

Cross examination by Mr. Zisgen:

"Q. Dr. Braekhus, I understand then that no compensation under the Acts you have mentioned is payable to the surviving relatives of a Belgian seaman whose death occurs on a Norwegian ship? A. That is correct, with one exception. In subsection 2 of the Act, there is special rules covering hospital treatment and funeral expenses.

"Q. With that exception my statement was correct? And am I correct, therefore, in assuming that the dependent relatives of a deceased Belgian seaman on a Norwegian vessel are not prohibited from suing, either in Norway or abroad? A. They are not prohibited from suing in Norway, and I should think you are correct that they are not prohibited from suing abroad.

"Q. That last would depend somewhat on the law of the forum, would it not? A. Of course."

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(537) • • •

Deposition of Joseph Collard

The first one is a deposition of a lawyer named Joseph Collard, • • •

Direct examination by Mr. Pyne:

(537)

Q. What is your occupation? A. I am a lawyer in Antwerp as from 1929.

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Deposition of Joseph Collard—Cross

Cross examination by Mr. Zisgen:

(554) • • •

"Q. In instances in which the question to be decided depends upon technical knowledge in fields other than that of navigation of ships to what sources do the Belgian courts turn for assistance? A. When cases do not concern navigation or stowage, the courts have recourse to other experienced specialized men in one or the other field.

"Q. In the field of chemistry for instance to whom do they turn? A. For these cases the court would generally appoint a chemist or a professor of merchantable goods.

"Q. Do you know the names of any chemists that the courts of Antwerp have consulted in such instances? A. From memory I know that the court has already appointed Mr. Desmurs and Mr. Angelot.

"Q. Have you ever known them to appoint or consult Dr. Jules Aeby? A. Mr. Aeby is very well known as author of the book, 'Dangerous Goods'. Personally I have never had him in cases which I have treated as being appointed by the Tribunal.

"Q. Have you known of any instances where the Tribunal of Antwerp has appointed him? (555) A. I do not know of any cases in which Mr. Aeby would have been appointed but I know that before the Court often use has been made of his book in the course of cases.

"Q. By that you mean use has been made of his book by the attorneys? A. Yes.

"Q. When you say his book, you mean, do you not, this book"——

That was then identified, your Honor, as the third edition, the 1938 edition, which has already been offered in evidence here.

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(568) • • •

Deposition of FRANCOIS VERWORST

Mr. Pyne: I would like next, your Honor, to read from the deposition of Francois Verworst:

Direct examination by Mr. Pyne:

"Q. What is your full name? A. Verworst.

"Q. First name? A. Francois.

"Q. Captain Verworst, you reside here in Antwerp? A. Yes.

"Q. What is your occupation? A. Nautical expert with the Tribunal of Commerce in Antwerp.

"Q. For how many years have you been a nautical (569) expert with that Tribunal? A. Since October 1947.

"Q. Prior to 1947 what was your occupation and how long? A. I have been for about twenty years in the service of the Compagnie Maritime Belge as second mate, first mate and captain.

"Q. Will you tell us briefly what the duties are of the nautical experts, what work do they do in the course of their ordinary day or week? A. We go daily aboard ships in order to verify the stowage of merchandise as well in loading as in discharging."

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(589) • • •

Cross examination by Mr. Zisgen:

"Q. What do you know of the characteristics of naphthalene? A. When we are not sure about any cargo, we (590) consult our books we have.

"Q. What books are they? A. American books, English books, French books.

"Q. Can you name them for me or some of them? A.

We have the book 'Dangerous Cargo' from the Minister of War transport. We have the same book in French given by the French Government. We have a standard American book given out by the Department of Commerce.

"Q. Is that 'Modern Ship Stowage'? A. Yes 'Modern Ship Stowage.' Then we have Thomas's book on stowage. We have a French book but I forgot the name of the writer, I am not sure.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

Mr. Pyne: May I continue with the next two or three sentences, your Honor?

The Court: Yes.

Mr. Pyne: Immediately after.

"Q. Have you Dr. Jules Aeby's book? A. Yes.

(591)

"Q. Do you refer to that? A. We refer to that and we have the latest edition, too.

"Q. I'll show you a book, which has been marked 'Libelants' Exhibit'—9—'for identification'——"

(To Mr. Zisgen) Is that the 1938 edition?

Mr. Zisgen: That is right.

Mr. Pyne: Do you know its present number?

Mr. Zisgen: 9.

Mr. Pyne: I will change that then to give it its present number—"which has been marked Libelants' Exhibit 9 for identification. Is that Dr. Aeby's book to which you refer?

A. Yes, but it is not the latest one."

All right.

Mr. Zisgen: On page 18:

"Q. Do you know that the vapor of naphthalene is explosive? A. Yes.

"Q. Where did you find that out? A. I have learned it and read in books.

"Q. Which books? A. Chemical books.

"Q. You knew that at the time the 'Black Gull' was (592) loaded? A. Yes.

"Q. Did you know that there was danger of fire occurring to naphthalene in 1952? A. Yes.

"Q. Was that a matter of general knowledge at Antwerp at that time? A. Yes, sir, I suppose everybody knows. I have read it in books.

Page 19:

"Q. The naphthalene stowed on the after deck on the 'Black Gull' at Antwerp was not covered and protected from the rays of the sun? A. No, sir.

Then at page 20:

"Q. Actually, Captain, you did not take into consideration at the time you were on the ship the possibility or the likelihood that there might be passengers on the ship and that they might smoke, did you? A. As I told you, sir, we are not interested in the crew or in the passengers.

"Q. You gave no thought to the crew or the passengers? A. It is not my mission. My mission consists only in verifying if all the necessary precautions have been taken."

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(598) • • •

Deposition of Dr. Jules Aeby

I would like now to read the portions of the testimony of Dr. Aeby which was not read by Mr. Zisgen in the claimants' case.

From Dr. Aeby's deposition, at the bottom of page 10:

Cross examination by Mr. Pyne:

"Q. Doctor, I am going to ask you to assume that an ordinary cargo vessel which is fitted with a midshiphouse, has forward of the midshiphouse three hatches and aft of the midshiphouse two hatches and that that vessel has a cargo of crude naphthalene which is in burlap or jute bags carried on her deck both forward of the midshiphouse and also aft of the midshiphouse and that those bags of naphthalene are fastened and secured in place with rope nets but not otherwise covered and that they are placed in tiers or layers five or six bags or thereabouts in height. I am going to ask you to assume that that vessel with that cargo of naphthalene on the (599) open deck sailed from Rotterdam July 11th, 1952, bound for New York and of course on a course through the North Atlantic and I am going to ask you to assume that the log book, the deck log book of that vessel shows the temperatures recorded at the end of each four hours watch and that all of these temperatures are in Centigrades and that on the first day, July 11th, the temperatures ranged from the highest of 18°C at noon time to the lowest of 16°C at 8 o'clock in the morning and 16°C at midnight. That on the following day July 12th the highest temperature was at 4 o'clock p.m. 18°C, the lowest 16°C at 4 a.m., that at 8 p.m. it was 18°C and the other watches 17°. That on

July 13th the highest temperature was at noon 22°C, the lowest 17° at midnight and the other watches were 18° four in the morning, 21° 8 o'clock in the morning 20°C 4 o'clock in the afternoon 19° at 8 p.m.

"That on July 14th the highest was 22° at noon, the lowest 16° at 8 a.m. and that at the other watches was 4 a.m. 17°, 4 p.m. 21°, 8 p.m. 19°, midnight 18°.

"July 15th, highest at 4 in the afternoon, 4 p.m., 23°, the lowest 19° at 4 a.m. and midnight, 20° at 8 a.m. and 8 p.m. and 22° at noon.

(600)

"July 16th: the highest was 20° at 4 am
19° at 8 am
18° at noon
19° at 4 pm
17° at 8 pm and midnight.

"July 17th, the highest temperature was at noon 23°.

"on the other watches 17° at 4 am
16° at 8 am
22° at 4 pm
21° at 8 pm
22° midnight.

"That on July 18th on which day a fire occurred on that vessel, the highest temperature was 25° at noon, the lowest at 4 am 19°, 8 am 20°. At noon the highest temperature was 25° and at 4 pm 23°, at 8 pm 22°, and I am going to ask you to assume that at or shortly after 11 o'clock at night, 11 p.m., 23 o'clock, a fire was discovered in the naphthalene abreast that portion of it that was abreast of No. 4 hatch, which is one of the two hatches aft of the midshiphouse. I am going to ask you to tell us whether or not in your opinion (601) the sun's rays could have been either a cause or a contributing cause to that fire."

Then there were some objections——

Mr. Zisgen: Well, if your Honor please, the situation since those objections were made have changed in that many of the missing elements have now been supplied in the evidence.

These temperatures are taken from the log book——

Mr. Pyne: Yes.

Mr. Zisgen: —which are set out in that exhibit that has already been offered, and we withdraw the objection to the question.

Mr. Pyne: And the balance of the hypothetical I won't take the trouble to read then, because we presented the witness also with a copy of the plan of the ship itself, which had then been marked for identification and has now been marked in evidence here as an exhibit.

And with those additional facts given to him, the question is repeated:

"I am going to ask you now based on those facts, whether or not in your opinion the rays of the sun which had occurred on that voyage have or could have been a cause or a contributing cause of the fire (602) which broke out in the naphthalene on deck on the port side of the vessel alongside of No. 4 hatch. A. My answer is no.

"Q. Would you be kind enough, Doctor, to explain or define for me what is meant by flash point of a commodity? A. The flash point of a commodity is the temperature at which the commodity takes fire when approached by an open or naked flame."

Now, Mr. Stonebridge asked a few questions.

Mr. Zisgen: Before he does, those temperatures are all in centigrade, are they not?

Mr. Pyne: That is right—the question to the witness so stated.

Mr. Zisgen: Well, not all of them do. And they were the temperatures, your Honor, on the bridge, as one of the witnesses brought out.

Mr. Pyne: That is correct, taken from the log book.

* * * *

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(608)

NILS VALEN, sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Valen, by whom are you now employed? A. Sigurd Herlofsen & Company.

Q. Are you presently a member of the crew of any vessel, and if so, what vessel? A. On board the "Black Hawk."

Q. Is the "Black Hawk" in the Black Diamond Steamship Corporation service? A. Yes.

Q. Are you a licensed mariner? A. Yes.

Q. And what license do you hold? A. Mate's certificate.

Q. Is that a Norwegian license? A. Yes.

Q. How long have you held that mate's certificate? A. Since June '47.

Q. All told, total number of years, how long have you been going to sea? A. Since March 1937.

Q. Were you formerly a member of the crew of the "Black Gull"? A. Yes.

(609)

Q. When did you first join the "Black Gull"? A. April 4, 1951.

Q. And did you remain on board in service of the "Black Gull" down to the time of the July 1952 fire? A. Yes.

Q. In what capacity? What was your job on the "Black Gull"? A. Third officer.

• • • •

(615) • • •

Q. When the "Black Gull" loaded at Antwerp and Rotterdam early in July 1952, for a voyage to the United States, were you present during that loading or a part of it? A. Yes, partly.

Q. When you say "partly," will you explain what you mean by that? A. We were running watches.

Q. When you were running watches, do you mean by that that you were on deck during your watch? A. Yes.

Q. When the "Black Gull" sailed from Rotterdam on (616) that voyage—and if need be, you can look at the log book, but I take the date July 10, 1952—did you see the deck cargo on the "Black Gull"? A. Yes.

Q. As third mate on the "Black Gull", while the vessel was underway navigating, did you stand a regular watch? A. Yes.

Q. What was the watch, where were you and what did you do—just generally? A. I was on the watch from 8 to 12 in the morning and 8 to 12 at night. I was all the time on the bridge and had to do with the navigation of the ship, lookout, etc.

Q. Excepting for your times on duty on the bridge in the 8 to 12 morning and night watches, were you on the bridge as watch officer at any other time ordinarily and

usually? A. I was on the bridge at night relieving the chief officer in order that he could go and get his supper.

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(617) • • •

Q. In the loading and stowing of the cargo on the "Black Gull" for this voyage, who performed the actual work of the loading and stowing? A. A stevedoring firm.

Q. During the loading and stowing at any time did you, as deck officer or otherwise, ever give any orders, instructions or directions with respect to the loading and stowing? A. No.

Q. Now when the vessel, the "Black Gull", sailed from Rotterdam at the time and on this voyage that you mentioned, did you personally see the deck cargo? (618) A. Yes.

Q. Briefly, what was the deck cargo? A. It was bags of naphthalene on the forward and after deck; there was also 33 drums of chemicals on the after deck; then there was a sailing yacht on No. 2 hatch.

Q. Will you tell us how this naphthalene was stowed on deck? A. It was stowed there fore to aft, a space three feet away from the hatch coaming and on the sides there was something like a fence of dunnage, spaced about one foot off the bulwark, and there were stores six bags high. The lowermost tier was stoward athwartship with a small space between every third bag.

Q. Were the bags secured or made fast in any way? A. We had nets of manilla rope on the top and sides—on top and on the sides.

Q. You have stated that the lowermost, the bottom tier of bags, had spaces between the bags, is that right? A. Yes, it was a small space between each third bag.

Q. For what purpose? A. In order that water could get out.

Q. How about the other tiers up above the first or

lowermost tier? A. They were stowed fore and aft. (619) tightly together.

Q. Except for the burlap or jute bags themselves and manilla nets which you have mentioned, was the stow of naphthalene covered in any other way? A. No.

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(624) • • •

Q. Was there any sign or signs or that or any (625) other kind on the boat deck anywhere? A. No.

Q. And how about the lower bridge: Were there any such signs on the lower bridge? A. No.

• • • •

(627) • • •

Q. Did you yourself personally while on deck or while on duty on the "Black Gull" ever smoke? A. I never smoked on deck.

Q. Did you smoke anywhere while you were on duty? A. Smoked in the chart room and the wheel room or wheelhouse.

Q. On the night of the fire what time did you go (628) on watch or on duty? A. About half-past eight.

Q. And where did you go then? A. I was on the bridge.

Q. Previously that evening had you also been on deck duty, the navigation bridge or pilothouse? A. Yes, I had previously relieved the chief officer from about 6 o'clock until 7.30.

Q. During the time that you were relieving the chief officer at the time you have mentioned, did the chief officer or the captain or both of them come to the navigation bridge? A. Yes, the chief officer came to relieve me again, and the master also came up.

Q. When did the master come up and for what purpose? A. The captain came up at about the time we passed Nantucket Lightship.

Q. What time, and if need be refresh your memory from the log book, did you pass Nantucket Lightship? A. That was at 1924.

(629)

Q. Did you take an observation of Nantucket Lightship? A. Yes.

Q. What was it? A. It bore 360 degrees true, 8 miles off by radar.

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(632) • • •

Q. Now, on the "Black Gull", was there any regular routine with respect to the wheelsman and the lookout changing places? A. There were two men on watch on the "Black Gull", and they relieved each other in such a way that they had one hour at the wheel and one hour at the lookout.

Q. Now, while you were on watch on the night of July 18, 1952, as deck officer, did anything unusual occur, and, if so, when and what? A. Yes. The time was about ten past eleven when I went out on the starboard wing, when I heard a sound which I thought was coming from aft.

Q. How do you fix that time of ten past eleven? A. Yes, I know, because the ordinary seaman had been at the wheel from ten to eleven and he went down soon thereupon—soon before.

Q. Can you describe as best you can the sound that you mentioned? A. I can say it was a hollow dump sound.

Q. I did not get the word after "hollow."

(Record read)

(633)

Q. Now, did you do anything and what did you do? A. I turned around and then I saw some smoke and a

small flame coming from the after deck portside just abaft—abreast of No. 4 hatch.

Q. Did you take any action or do anything then? A. I ran down on the port side to the sun deck which is above the boat deck.

Q. I will show you Petitioners' Exhibit R and ask you whether you can indicate what deck you are talking about (handing to witness). A. I talk about that sun deck there (indicating).

Mr. Pyne: Can we mark it in any way or describe it, your Honor?

The Court: You can have him mark it "SD."

Q. On what level is that deck—level with what? A. It is at the same height as the deck on the lower bridge.

Mr. Pyne: In accordance with your Honor's suggestion, might I put "SE" on that deck that he pointed out?

Mr. Longley: This is on Exhibit R?

Mr. Pyne: That is on Exhibit R, yes.

The Court: What does "E" stand for?

Mr. Pyne: I understood your Honor to say (634) to have it marked "SE."

The Court: "SD."

Mr. Pyne: Oh, "SD."

(Mr. Pyne marks)

Q. Now, what did you do when you got to that sun deck? A. I ran back in order to call the master and I met him in the alleyway to his room.

Q. And what did you do on that deck? A. I ran back to the bridge and gave a signal which passed to all passenger rooms and alleyways—which passes to all passengers and crew alleyways. Then I ordered the man at the wheel

to give port helm. Then I rang the engineer on watch to ask for water on deck. And at the same time as I ordered port helm the captain came on the bridge and ordered "Hart aport," and took over the command.

Q. What then did you do? A. I ran down on the boat deck and then on to No. 4 hatch, and took a water hose and commenced to extinguish.

Q. When you got to the main deck where No. 4 hatch was, was there any other person or persons there? A. Yes.

Q. Who was there? A. On the boat deck I en- (635) countered the chief officer and the second officer, and there were several others; and on the No. 4 hatch there were also several others.

Q. Who were these others? Not necessarily by name, but were they members of the crew or not? A. Yes, they were members of the crew.

Q. Will you tell us what you did when you got to the main deck? A. I got hold of a hose and commenced to extinguish.

Q. From where did you work? A. From the port side of the No. 4 hatch.

Q. Will you tell us what you saw when you arrived at that spot? A. I saw that there was a fire on the top, and I was just going to jump up on top of the naphthalene, because it didn't burn in the tier that was closest to the No. 4 hatch, but then I saw that it was burning between the second and third tiers from the top, and I put the water on there in order to try to extinguish it and prevent the fire from getting to No. 4 hatch.

Q. When you jumped or got onto the top of No. 4 hatch you have mentioned that you saw fire on top. Will you explain where on top you saw the fire? A. It was on top of the stowage of bags, about at (636) the middle of the stowage.

Q. When you say "middle," are you referring to fore and aft or side to side? A. Sideways.

Q. And abreast of No. 4 hatch, how was it, in a fore and aft direction, that middle spot? A. It was a little forward of the middle of the hatch.

Q. You have referred to the second and third bags. Will you explain what you mean by that?

The Interpreter: He said "tiers."

Mr. Pyne: I am sorry, the second and third tiers of bags.

A. I meant on the side of the stowage between the second and third tiers.

Q. Which side? A. On the inside of the stowage.

Q. And second and third tiers from where? A. From the top.

Q. What did you see there? A. I saw that it was burning there.

Q. With respect to the bags above that place on the side where you saw the burning on the side, what was the condition on the top? A. They didn't burn.

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(647) • • •

Cross examination by Mr. Stonebridge:

• • • •

(648) • • •

Q. Did you know Captain Inge Svendsen? A. Yes.

Q. He was marine superintendent for Herlofsen, was he not?

Mr. Pyne: I request that a time for this be fixed, your Honor.

Mr. Stonebridge: In 1952.

A. I assume so.

Q. Why do you assume so?

Mr. Pyne: I move, your Honor, to strike out what the witness assumes.

Mr. Stonebridge: Well, I am going into it, why he is assuming it. What more do you want?

The Court: It is cross-examination.

A. I have heard it.

• • • •

(651)

Cross examination by Mr. Longley:

Q. You told us that you had made 19 or 20 voyages between European ports and United States ports on Black Diamond vessels. A. Yes.

Q. Do you mean ten in one direction and ten in the other, about? A. 19 or 20 each way.

Q. Now, dealing with the westbound voyages, that is, from North European ports to United States ports, did I understand you to say that on each one of those voyages where you sailed there were carried a stow on deck of this naphthalene? A. Yes, that is right.

Q. And in each one of these prior voyages on Black Diamond vessels the naphthalene was stowed on deck at Antwerp and Rotterdam, was it? A. Yes.

Q. And in each case I understood you to say that it was stowed on deck as it was stowed on the "Black Gull" on her last voyage? A. Yes.

Q. That is, it was stowed approximately 6 feet high, made fast by nets but without any cover other than the nets over the top or sides, is that correct? (652) A. That's right, except in regard to one voyage.

Q. Tell us about that one voyage. A. It was a voyage during the winter, a small part of the naphthalene on deck,

on the forward deck, was covered by tarpaulins in order that it shouldn't disappear—in order that it shouldn't become wet, and that tarpaulin was supplied by the shipper.

Q. Dealing with other voyages where no tarpaulins were carried, some 19 additional voyages, I take it from what you say, when these other vessels on these 19 voyages sailed from their last port of loading in Antwerp, their deck load of naphthalene in this case was completely uncovered except as there may have been rope slings? A. That's right.

Q. And the stow of naphthalene in each of those cases remained uncovered from the time the ship sailed from her last port of loading until that naphthalene was discharged at the port of discharge in the United States; is that so? A. Yes.

Q. What did you know, if anything, about the characteristics of napthalene? A. I know it is a kind of dangerous cargo.

(653)

Q. Dangerous in what way? A. I don't know.

Q. Did you ever receive any warning from anyone about its dangers? A. I received orders not to smoke on deck.

Q. Who gave you those orders? A. The master.

Q. Did he tell you why you were not to smoke on deck? A. He said it was dangerous cargo.

* * * *

(655) * * *

Q. Then there was a gangway or passageway about three feet in width extending along the hatch coaming, with the hatch coaming on one side and the stow of naphthalene on the other side; is that not right? A. Yes.

Q. And that passageway was the only way that the

crew could go forward to their duties from their quarters in the poop, is that not correct? A. Yes.

Q. And the crew went back and forth through that passageway watch by watch, did they not? A. Yes.

Q. Throughout the 24 hours, day and night? A. Yes.

• • • •

(660) • • •

Q. Dealing now with the picture marked Petitioner's Exhibit Q, this is also on the port side looking aft, is it not? A. Yes.

Q. And that is the deck on which the passengers usually walked? A. Yes.

Q. Now at the end of this deck as appears in this picture marked Petitioner's Exhibit Q, you will find to the left a companionway, a staircase, will you not? A. Yes.

Q. To where did that ladder lead? A. It goes down to the boat deck.

Q. And then there was a ladder that led from the boat deck down to the main deck? A. Yes.

Q. This picture, Petitioner's Exhibit S, shows at the right, does it not, the stairway leading down (661) to the boat deck from—you call this the sun deck in Petitioner's Exhibit Q? A. That is not the sun deck. That is the deck of the lower bridge.

Q. Well, all right. This Petitioner's Exhibit S shows the stairway coming down to the boat deck from the lower bridge deck? A. Yes.

Q. And then showing at the after end of this picture there is an opening in the bulwarks? A. There is an opening.

Q. And that is where the companionway was from the boat deck down to the main deck? A. Yes.

Q. One standing in this opening here and looking down the stairs would look immediately on top of the stow of

naphthalene on the port side of the after deck of the "Black Gull"; isn't that true? A. He won't see right down on it.

Q. Why not? A. Because the bags of naphthalene are stowed somewhat abaft the foot of the ladder.

Q. I see what you mean. The stow of naphthalene about six feet high started about three feet aft of the bottom of the ladder; isn't that so? A. Yes, about three feet. A little more.

(662)

Q. During the course of the voyage of the "Black Gull," what occasion, if any, did you have to examine the stow of naphthalene on the after deck? A. When I was on watch at sea I had my watch on the bridge, and it was my job to look both ahead and astern.

Q. The only examination you made of the stow of naphthalene on the after deck was looking toward the stow from your position on that vessel's bridge; is that what we are to understand? A. I was not allowed to leave the bridge.

Q. Well, I guess you probably indirectly answered my question.

Mr. Longley: Put my question to him and ask him if that is not so, that during the whole voyage the only examination he made of the stow of naphthalene in the after deck was from his position on the bridge of the ship.

The Witness: (Through interpreter) That is right.

* * * *

(665) * * *

Q. Well, in any event there came a time that you could not go forward to where you were in the poop? A. Yes.

Nils Valen—for Petitioner—Cross

Q. And that was because there was a wall of flame from the naphthalene across the ship between you and amidships? A. Yes, on both sides.

• • • •

(673) • • •

Q. Now, your ship made about 16½ knots, did it not? A. Yes.

Q. On the night of the fire you had a port breeze, did you not? A. Yes, a little on the port.

(674)

Q. So anything thrown over the port side of your ship, by the very nature of things, would be carried aft and over to starboard, isn't that so? A. That is pretty hard to tell.

Q. Well, a breeze blowing from the port necessarily carries anything to starboard, doesn't it? A. Yes.

Q. And as you were going 16½ knots ahead, anything thrown over on the port side is going to be taken aft, isn't that so? A. Yes, it ought to, it should.

• • • •

(675) • • •

Q. And you were at the starboard and you looked aft, did you? A. Yes.

Q. And at that time you couldn't see flames from the starboard side, could you? A. I saw a small flame.

Q. And then from what you saw you knew it was on the port-side of your ship? A. Yes.

Q. And so you went over on the port side of your ship, did you not? A. Yes.

Q. And then you went down, was it the sun deck you told us? A. Yes.

Q. And the sun deck, is that level with your upper bridge? A. At the same height as the lower bridge deck.

Nils Valen—for Petitioner—Cross

Q. And then you could look right down on top of the stow of naphthalene? A. I couldn't see directly down.

Q. Perhaps I don't understand the situation. Why not?

(Witness indicates on photograph)

A. If I am standing right out there I can't see (676) directly down. I am looking at an angle.

Mr. Pyne: Pointing to the after end of the deck marked "S. D." on Petitioner's Exhibit R.

• • • •

Q. Were you standing on this deck marked "S. D."? A. Yes.

Q. And you were standing at the after end of this deck? A. Where I was standing exactly I am not certain.

(677)

Q. Well, in any event, the stow of naphthalene was right in front of you, wasn't it? A. It was several feet aft, towards the naphthalene.

• • • •

(678) • • •

Q. As you stood where you did stand on the sun deck you could see the stow of naphthalene down below, couldn't you? A. Yes.

• • • •

Q. From the position where you were on the sun deck, as you looked aft at your stow of naphthalene, that is what you were seeing, was it not? I am laying before you Petitioner's Exhibit P (indicating). A. This drawing here is made in order to elucidate what I saw from No. 4 hatch and not from the sun deck.

Q. Well, in any event, that is what you saw when you

looked down on the top of the stow from the sun deck, isn't that true? (679) A. I saw a flame and smoke.

Q. And you saw that flame and smoke at the top of the stow of naphthalene about where you have marked that in red?

The Court: About where he has marked it in red.

Mr. Longley: About where he has marked it in red. That is not where I marked it, but he has marked it.

A. Yes.

* * * *

(680) * * *

Q. Mr. Valen, just before the recess you may recall I was interrogating what you saw when you looked down from the sun deck and you told us that you saw flames at the top of the stow of naphthalene? A. Yes.

Q. And I asked you and you told that where you saw the flames was approximately the position marked in red on this Petitioner's Exhibit T? A. Yes.

Q. The position to which you have referred I have marked in Exhibit T with the word "fire" with an arrow pointing to that area. As you stood there——

Mr. Pyne: Captain, I cannot hear you back here on the answers.

Mr. Longley: I will step back here.

Q. Now as you stood there at the after end of the sun deck all you could see was that fire on the top of the stow with black smoke, isn't that true? A. It was all that I observed at that time.

Q. Now how big an area, approximately, did this fire cover at that time? A. I can't answer that.

Q. I appreciate you can't give it to us in (681) inches

but was there an area two or three feet across or was it just a few inches across? A. It is impossible to say how much it was because I only saw a little flame and then I ran back again immediately.

Q. And it was about in the position you marked on Exhibit T, I think you told us, approximately midway between the bulwarks and the edge of this stow, three feet inboard—I should say outboard from the hatch coaming? A. Yes, it is about at the place.

Q. And I think you said it was somewhat forward than midway of the No. 4 hatch, in a fore and aft direction? A. Yes, a little forward aft than the middle of the hatch.

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(682) • • •

Q. Then having turned the ship, already having given the information to the master, you went aft to No. 4, did you? A. Yes, when the captain had taken over the command I went down.

Q. You went down on the starboard side to go aft? A. I went down on the port side.

Q. And then you got up on the No. 4 hatch? A. Yes.

Q. As you stood on No. 4 hatch, the stow of naphthalene was a foot or two higher than the top of the hatchway, was it not? A. About two feet.

Q. And as you looked toward the stow the first (683) thing you saw was still the flames and the smoke coming up from the top of the stow at the position you had seen when you were on the sun deck, isn't that so? A. Yes, I saw flame and smoke.

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(684) • • •

Q. In any event, having done what you have mentioned, you went aft and you picked up the hose after the engineers had given you pressure, isn't that true? A. Yes.

Q. And then you planned to jump up on top of the stow of naphthalene and use the water from the hose on the area of flame which you had already seen at the point marked "fire" on Exhibit T? A. Yes, I wanted to try to extinguish the fire.

Q. And then you found you couldn't get up on top of the stow because the flame was working towards you, isn't that correct? A. Yes, I could get up.

Q. Why didn't you? A. Because it was burning out from the side of the stow.

Q. Now you are referring, I take it, to this point that you have marked in red on the side of the stow on Exhibit T? A. Yes.

Mr. Longley: Now let us see how I will mark (685) that. How do you want me to mark that, Mr. Pyne?

Mr. Pyne: Any way you want is all right with me.

Mr. Longley: Well, I will call this "fire(2)" (marking).

Q. Now do I understand that that was the first time you saw any fire at that point which I have marked "fire(2)"? A. Yes, I didn't see that before I got down on No. 4 hatch.

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(706) * * *

GUSTAVE OLSON, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Olson, you are chief engineer of vessels? A. Yes.

Q. Do you hold any license? A. Yes.

Q. What license do you hold and how long have you held it? A. I have had third class since 1936.

Q. Is that a Norwegian engineer's license? A. Yes.

Q. How long have you been going to sea in total number of years? A. About 30 years.

Q. What vessel are you now serving on? (707) A. The "Black Hawk."

Q. You were formerly chief engineer of the "Black Gull"? A. Yes.

Q. When did you join the "Black Gull" as chief engineer? A. I was sent down to Lanskrooner to supervise the building.

Q. And from the time the vessel was built down to the time of the fire were you chief engineer of the vessel? A. Yes.

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(721) • • •

Cross examination by Mr. Longley:

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(722) • • •

Q. Chief, it is true, is it not, that sparks do come from the funnel of a diesel-powered ship at times? A. Yes, that's right.

Q. You had no spark arresters over your funnel, did you? A. No, I haven't seen that on any ship.

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(732) • • •

HARRY KRISTIANSEN, called as a witness on behalf of the petitioner, was duly sworn through the interpreter, and testified through the interpreter as follows:

Direct examination by Mr. Pyne:

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Q. You formerly were a member of the crew of the "Black Gull"? A. Yes.

Q. You were second officer on the "Black Gull" on the voyage on which the fire occurred? A. Yes.

Q. For how many years total have you been going to sea? A. About twelve years.

Q. Do you hold any license? (733) A. I got the chief officer's certificate. I also hold a master's certificate.

Q. Mr. Kristiansen, we are having trouble back here in hearing, so speak up a little bit. How long have you held a master's license? A. Half a year.

Q. And how long have you held a mate's license? A. Since June 1950.

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(738) • • •

Q. Now, you stated that you were in your bunk on the night of July 18, 1952. A. Yes.

Q. What caused you to leave your bunk? A. One of the stewardesses came and woke me up and said there was fire on deck.

Q. What did you do then? A. I turned out immediately.

Q. Where did you go? A. Out on deck.

Q. Whereabouts on deck and what did you do? (739) A. I went out on the boat deck, got ahold of a hose and connected same up and sprayed water from the boat deck down on the fire.

Q. Where was the fire as you saw it? A. About in the

middle of the stowage, at about the middle of No. 4 hatch.

Q. How long did you continue to play water from that place? A. About 10 minutes.

Q. And where did you go then? What did you do? A. Then I went out on the deck and tried to get out from the door on the port side, while at the same time I tried to lock the door there which was standing open.

Mr. Pyne: I did not get that.
(Answer read)

Q. Port side where, and what door are you talking about? A. I am talking about the port door in the midship building. That is the after door.

Q. Did you close the door? A. I couldn't get to it on account of the fire.

Q. Now, where—if you will, please, tell us where you went and what you did. (740) A. I went all through the rooms on the port side to see if there were anybody there.

Mr. Pyne: To see what, Captain?
The Interpreter: ". . . to see if there were anybody there."

Q. Well, proceed and tell us what happened. A. Then I went back on the boat deck and probably continued to spray water. At that time there was already fire on the after end of the port lifeboat.

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(764) • • •

Cross examination by Mr. Longley:

Q. Then the nearest you ever came to the fire, then, was on the boat deck aft? A. Yes, the after part of the boat deck.

Q. And you played the hose on when you saw the flame in the naphthalene, on the port side, did you not? A. Yes.

Q. And that flame was about halfway across the stow from port to starboard, was it not?

Well, I did not put it very well. I will withdraw that question. The flames were about halfway on the top of the stow between the hatch coaming and the port side of the ship. A. Yes.

Q. And that is the only place you saw any flame, (765) was it not? A. To begin with, yes.

Q. And then the flames extended over the top of the stow with great speed, did they not? A. I won't say very fast, but it spread.

Q. And there was a high flame and much black smoke; isn't that true? A. It was a flame. I can't say the height of it but it was very much smoke.

Q. When you first got there and saw the flame, approximately how large an area was it burning on the top of the stow? A. I can't say.

Q. How many hoses were playing on the fire when you got there? A. One was connected when I got there, two or three others were connected just afterwards.

Q. And these were all four fire hoses connected up to the water system of the vessl? A. Yes.

Q. And that water was played on this fire under pressure from the fire hoses, was it not? A. Yes.

Q. And instead of the fire being extinguished it spread from the stow of naphthalene on the port deck; isn't that so? A. Yes.

Q. And then the fire spread the naphthalene on (766) the starboard side of the deck? A. Well, that was after the lifeboat had been put into the water.

Q. You mean you didn't see that, you didn't see it burning on the starboard side? A. Yes, from the lifeboat.

Q. And you saw molten naphthalene blazing and running

down the ship's side, did you not? A. Yes, after the lifeboat was clear of the ship.

Q. And from where you were in the lifeboat you saw the fire burn from aft forward and destroy the midship structure, did you not? A. Yes.

Q. And then the fire spread forward and consumed the naphthalene on the forward deck, both port and starboard, did it not? A. Yes.

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(769) • • •

Q. Well, I got the wrong dates. The 13th of July (handing). A. (Examining.)

Q. On that day your vessel pitched and you had spray over the decks and hatches, did you not? A. Some pitching with spray over deck and hatches.

Q. And on the 17th you had a force 6 wind, did you not? A. Yes.

Q. Is the force of your winds computed on the Beaufort scale? A. Yes.

Q. And on the 12th your vessel pitched with spray over the deck and hatches, isn't that true? A. (After examining) Yes.

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(770) • • •

Q. That is fair enough. However, as far as concerns the "Black Gull," she had her decks covered with naphthalene, both forward and aft, isn't that so? A. Yes.

Q. As the naphthalene was stowed on the "Black Gull" it was exposed to the sun's rays throughout the voyage across the Atlantic, wasn't it? A. Yes, the day that we had sun.

Q. That is fair enough, too. And you know (771) that the naphthalene was stowed in jute bags? A. Yes.

Q. What did you know when this voyage commenced

concerning the characteristics of naphthalene? A. What we call dangerous cargo.

Q. What was the danger as you understood it? A. That the cargo was inflammable.

Q. Did you receive any particular warning from anyone as to the care to be taken in connection with it? A. Not to smoke on deck.

Q. You did smoke when you were on watch on the bridge and in the chart room, did you not? A. Not on the bridge but in the chart room.

Q. What about the wheelhouse? A. Yes.

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(775)

Deposition of Dr. W. N. E. Van Rossem

Mr. Pyne: I would like to read, your Honor, from the deposition of Dr. W. N. E. Van Rossem.

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Direct examination by Mr. Pyne:

"Q. Doctor Van Rossem, where do you reside? A. At The Hague.

"Q. What is your occupation? A. I am a barrister and solicitor at Rotterdam."

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"A. I have practiced since 1917 in Rotterdam, always in the same firm."

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(776) • • •

"Q. Are you admitted or licensed to practice in any Netherlands court or courts and, if so, what court or courts? (777) A. Of course I am. All Dutch barristers

are qualified to appear before all courts in the Netherlands including the 'Hoge Raad,' what you call in America the Supreme Court, without any exception."

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(778) • • •

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, in maritime law."

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(779) • • •

"Q. Are there now in force, and were there in force (780) in June and July 1952, any general laws, rules or regulations in the Netherlands concerning loading, stowage and carrying of dangerous cargoes on vessels? A. Yes, sure.

"Q. Will you state for us please what those laws were, and identify them? A. I am referring to what we call the 'Schepenwet.'

(Pointing to Beerman Exhibit 2 for identification.)

"Q. Will you tell us what part or portion, and identify them please, of that law refers to dangerous cargoes? A. On the strength of the Schepenwet the Crown has issued the Schepenbesluit. The Schepenbesluit in force in June 1952 was the Schepenbesluit issued the 26th of November 1932, Staatsblad 563.

"Q. I notice that you have yourself produced here and have among your papers a book to which you have just referred and which you are using and which down in the lower right hand corner has on its cover after the word Zwolle the year 1950. Is this book which I now show you the same as the book to which you have referred and which you have produced? A. Yes."

And I asked to have the book marked for (781) identification and it was produced and marked, your Honor.

"Q. Will you please identify what part or portion or section of this Van Rossem Exhibit 1 for identification covers the matter of dangerous cargoes, identifying it by section and also by pages of the book? A. As I told you the word naphthalene is never mentioned, but the only article which might be referred to is article 94 on page 146 and the following pages, and if naphthalene ought to be considered as a dangerous cargo it should be in section 4 of article 94."

We then produced, your Honor, and had marked the certified translation by what they call in Holland an official, or, rather, sworn translator of Section 94. It was then marked as Exhibit 2 for identification.

I will offer it in evidence now, your Honor.

Mr. Zisgen: Your Honor, that is the same translation which has already been received in evidence as Libelants' Exhibit 34-A.

* * * *

(808) * * *

Cross examination by Mr. Stonebridge

"Q. During your direct examination, if I recall correctly, you stated that Dutch law applies only to Dutch vessels. Are there any exceptions to that general statement? A. I meant that this Dutch law applies to Dutch vessels.

"Q. The Schepenbesluit that has been referred to in the course of your testimony? A. That is stated in art. 2 of the Schepenwet. I might refer you to art. 69 subsec-

tion 1. Here it is stated that the officials of the Shipping Inspection are entitled to detain a vessel of foreign nationality in certain cases mentioned in the article. Do you want a translation?

(809)

"Q. Would the interpreter please translate on the record art. 69 subsection 1?"

The translation follows:

"Apart from the provisions of art. 67 a Shipping Inspectorate official is empowered to detain a vessel of foreign nationality which does not in pursuance of articles 2 or 2bis fall under the present act, and which by reason of the unsound condition of the hull, the gear or the equipment, or as a result of bad stowage endangers the persons on board."

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Cross examination by Mr. Zisgen:

"Q. Are you a member of the Maritime Law Association of the Netherlands? A. No, I am not."

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(810) • • •

"Q. Is it not a fact that in general the Maritime Law of the Netherlands is based upon the same principles as those embodied in The Hague Rules? A. It is."

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(811) • • •

"Q. Do you agree that under the law of the Netherlands the parties to a contract for the carriage of goods by sea may lawfully provide that their contract may be governed by The Hague Rules in whole or in part? A. Yes.

"Q. And that is true, is it not, whether the contract is for the carriage of goods to the Netherlands, or from the Netherlands? A. They always may.

"Q. It is a fact, is it not, that under the Commercial Code of the Netherlands, the Maritime Law, the carrier is under an obligation to load and stow the goods properly and carefully? A. Yes.

"Q. And that is true of all goods which he accepts for carriage? A. Yes.

"Q. That obligation applies to goods carried on deck with the shipper's permission? A. Yes.

(812)

"Q. And you agree, do you not, that the carrier may not by contract exempt himself from that obligation? A. He surely may not when the ship is outward bound.

"Q. And by outward bound do you mean bound from the Netherlands to a foreign port? A. I refer to article 517d.

"Q. As printed in Beerman Exhibit 1"—now Libelants' Exhibit 33—"for identification, is it not? A. Yes, page 91.

"Q. And is it not a fact that in determining whether a carrier is living up to the obligation of careful proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves? A. Sure.

"Q. And is it not also a fact that in determining whether the carrier is living up to that obligation, the Netherlands courts take into account the whole stowage of all the goods on the ship? A. Sure.

"Q. And that includes, does it not, goods which may have been stowed on the ship at prior ports including foreign ports? (813) A. Yes. You mean that the stowage in a foreign port——

"Q. If the ship comes to a Dutch port with goods stowed

at foreign ports on board— A. and other goods are stowed in Dutch port——

"Q. Yes. A. Oh yes.

"Q. And then, to sum up our exchange, the Netherlands courts do take into account the goods that have been stowed at those foreign ports and the goods stowed at the Dutch ports? A. Yes.

"Q. Now there is a royal decree relating to the stowage and carriage of dangerous goods and that is the decree of November 26, 1932, as amended on December 27, 1939, is it not? A. Yes.

"Q. Check that if you wish. A. November 26, 1932, there was——

"Q. And tha' was amended December 27? A. Replaced by another one, that is not the same.

"Q. It was the replacement of December 27, 1939? A. No, surely not.

"Q. Let us go back. I asked you whether there was (814) a decree of November 27, 1939, relating to dangerous goods. Your answer was yes. Then as I understood you that was replaced. A. In 1952. The 31st of December 1952 a new Schepenbesluit came into force.

"Q. As of June and July, 1952, it was the decree of November 26, 1932, as amended December 27, 1939, which was in effect? A. It has been amended several times, in 1936, 1937, 1939, 1940, 1947, 1948, 1949.

"Q. And as amended up to June and July 1952 and as in force at that time that decree contained a definition of dangerous goods other than liquids, did it not? A. Yes, a definition. I don't know whether I must say definition, but it mentions in art. 94 sub 4 goods which are no liquids, solid goods.

"Q. And in that part of it to which you have just referred, what does it say?

"Mr. Stonebridge: We have a certified translation of that sub-section.

"Q. And the portion to which you referred is sub-section 4 of sec. 94 in that translation, is it not? A. Yes."

(815)

Mr. Longley: I think at this point it might be well to read Subsection 4 of Section 94.

"Solid substances which are easily inflammable or which when heated to 70 degrees Celsius may evolve combustible gases, must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads and pipe lines which may be exposed to heating. If stowed on deck they may not be exposed to direct rays of the sun. The substances mentioned in the present sub-section and substances mentioned in subsection 156 and 7 may not be stowed in the same spaces."

(Continued reading)

"Q. You told us did you not that you are not a chemist? A. That's right.

"Q. You are not in a position to say of your own knowledge whether naphthalene is easily inflammable, is that correct? A. I know it is, but

"Q. You are not in a position to say of your own knowledge whether naphthalene when heated to 70 C may evolve combustible gases? A. I never made a check but I take it for granted.

(816)

"Q. You agree do you not, that whether naphthalene is inflammable is a matter of fact? A. I think so.

"Q. And it is also a matter of fact whether naphthalene will evolve combustible gases when heated to 70 C? A.

I am not familiar of American law, but I would call it a matter of fact."

I should say parenthetically that "centigrade" and "Celsius" are the same. I did not know it until this case—"Celsius" and "Centigrade" are the same thing.

Mr. Pyne: That is right.

Mr. Stonebridge: Agreed.

Mr. Longley: (Reading)

"Q. You agree, do you not, that the mere practice of persons who deal with naphthalene does not ultimately determine either of those facts? A. I agree."

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(818) • • •

"Q. Now as I understood you the only authority in which any Dutch shipping official could make regulations concerning dangerous goods was to be found in July 1952 in sub-section 13 of art. 94, is that correct? A. No, that is not correct.

"Q. That is what I understood you to say. A. That is incorrect.

"Q. What are the facts? A. That the whole of the article 94 is dealing with this matter. Sub-section 13 is only a part of it.

"Q. You do not consider that under Netherlands law there may be authority in shipping officials to make regulations to carry into effect let's say the provisions of (819) the Hague Rules? A. No, surely not. We are not in a Hitler country. There should be an act.

"Q. And what do you mean by act? A. An act of Parliament.

"Q. What I might call a statute? A. That's right.

"Q. Am I correct that there are in the Netherlands

first these acts of Parliament, second Royal Decrees? A. If provided for by an Act of Parliament.

"Q. And only if provided for in an Act of Parliament. What is a ministerial decree? A. That is something the Act or Royal Decree has delegated a certain power in the minister without the Crown.

"Q. Then a ministerial decree would be one which did not require the Crown's assent? A. That is correct.

"Q. Then beneath those ministerial decrees or regulations— A. If they are provided for in a higher region.

"Q. So that in a sort of hierarchy we might have an Act of Parliament which authorizes the Crown to issue a decree— (820) A. Or the minister.

"Q. Or that Act of Parliament might authorize the minister to issue a decree without royal consent? A. Yes.

"Q. Similarly, I take it, a Royal Decree if authorized by a statute of Parliament might authorize a minister to issue a decree in accordance with the Royal Decree or the Statute. A. That is right.

"Q. Then in turn in a proper case the ministerial decree might authorize an appropriate official to issue regulations under it, is that correct? A. I see no objection, however, I don't know an example by heart.

"Q. You know of no legal reason why that situation could not exist? A. No.

"Q. In other words, so long as you have at the top of the pyramid an Act of Parliament, there is no prohibition in the law of the Netherlands against delegation on down through a Royal Decree, a ministerial decree and the regulations to lower officials to exercise certain powers, is that correct? A. Yes, I think that is correct. The official may not be too low, but——

(821)

"Q. That is a question of degree. A. A question of policy. For instance here the Royal Decree, not a min-

isterial decree, has delegated certain powers to the Inspector General of Shipping.

"Q. That is what I was coming to. A. Mind you, it is the Royal Decree which has delegated power.

"Q. To the Inspector General to make regulations? That was the situation in July 1952? I take it that there is no question that in June and July 1952 the Inspector General of Shipping had the power to make regulations with respect to the carriage of naphthalene. A. No, that is not correct. Only if naphthalene is meant in article 94.

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(823) • • •

"If I have misstated what you said I am sorry. You can conceive of a situation, can you not, in which shippers and carriers both ignore or violate a statute or a regulation? A. I can conceive that they do once or twice, but not regularly.

"Q. You do not want us to understand that under the law of the Netherlands one or two violations of a statute are crimes but more than that are not? A. Of course not, but one or two might not be discovered, that is what I mean.

"Q. Your point is simply that the existence of a practice, an invariable practice over a long period of time, itself establishes that the practice does not violate the law? A. No, the practice may not violate the law.

(824)

"Q. I am not sure that I am quite clear what your last answer means. A. When there is a law, a deviating practice can never be stronger than the law, can never put aside the law.

"Q. And you reason from that, if there is an invariable practice which has continued for a long time, that in itself is conclusive evidence that there is not a violation

of law involved in the practice, is that correct? A. I think so.

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(825) • • •

"Q. And in your view no law, no statute, no decree, no regulation can have any binding force in the Netherlands unless published in one or the other of those two publications. A. That is right.

"Q. You told us that acts of Parliament and royal (826) decrees were expressly required to be published. Can you give us the reference to the law or decree so requiring? A. Constitution, art. 74. It says that laws have to be made for the promulgation of acts of Parliament and royal decrees.

"Q. And as to ministerial decrees I understood you to say that there is no such express requirement. A. There is an express requirement but not in an act.

"Q. That express requirement appears where? A. That is stated by the Supreme Court as I mentioned.

"Q. That is the decision in Jurisprudence 1936 No. 490. Are you familiar with the doctrine stare decisis? A. I know what it means, that you are governed by decisions.

"Q. Yes. The doctrine of stare decisis is not followed in the Netherlands, is it? A. No, it is not, at least not as such.

"Q. And I take it, Doctor, that what you mean is that, while the courts may not be legally obliged to follow earlier decisions, in practice they accord them respect? (827) A. Not only respect but they accord them a very considerable degree of guidance.

"Q. And it is on the basis of that decision in 1936 that you base your opinion that ministerial decrees and regulations must be published in one or the other of the publications which you mentioned in order to have binding force?

A. Not only on that decision. That decision only reflects the opinion of the Dutch law people.

"Q. The Dutch lawyers? A. The judges as well. Of the Dutch people who have studied law. That is what I mean.

"Q. That is merely an opinion, is it not? A. Oh, no, that is not an opinion. It is said so——

"Q. Perhaps I have not made myself clear. When I said that is only an opinion, I was referring to your statement that the Dutch lawyers and Dutch students of the law held that view. A. Yes, that is right.

* * * *

(828) * * *

"Q. You told Mr. Stonebridge, as I understood you, that the shipping officials were authorized to detain foreign vessels from sailing. A. Yes.

"Q. If as a result of bad stowage their condition (829) would endanger the persons on board? A. Yes.

"Q. You told me I thought that the purpose of the regulation requiring shippers to notify the shipping officials when dangerous goods were to be shipped was for the safety of the persons on board? A. Yes, I did.

"Q. Then I don't understand why you seem to feel that this obligation imposed by sub-section 12 of art. 94 is not applicable when the goods are to be shipped on foreign ships. A. My conclusion is that the law does not say so, but nevertheless according to art. 69, sub-section 1 of the Schepenwet, if the Shipping Inspection discover anything mentioned in that sub-section, they are entitled to detain the vessel, and moreover the local harbormaster has an analogic power, because he looks after the safety of the harbors. So if any ship by the way of stowing should endanger the harbor he has the right to detain it as well.

"Q. And both of those authorities would be entitled to excercise their power of detention even though the shipper

had not notified them that dangerous goods were to be shipped? (830) A. Yes, that is correct.

"Q. The danger both to the persons on board and to the safety of the harbor would exist equally whether A. Yes, of course."

• • • •

"Q. According to your view, there has not been ever any regulation regarding the carriage of naphtha- (831) lene? A. Yes.

"Q. And there are not now? A. Correct.

"Q. Why, if that is so, would the Shipping Inspector of the Second District send to Van Nievelt Goudriaan & Company a copy of the proposed regulations which has been marked Van Rossem Exhibit 5d?"

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(847) • • •

"A. Mr. Visser, the man who signed it, is a very courteous man. He thought perhaps that Messrs. Van Nievelt Goudriaan would be interested to learn what was cooking and is still cooking.

"Q. Even though you are not a chemist, you will agree I think that any dangerous characteristics which naphthalene will have when these proposed (848) regulations are published, it has now? A. The danger is not determined by any regulation, of course not.

"Q. The same is true as of June and July 1952, is it not? A. Yes, it has always been true and it will always be true.

"Q. And yet in your view for a substantial period of time the Inspector General of Shipping, by delaying the issuance of the regulations which are to be published in this book— A. Beg pardon, the minister.

"Q. Very well, the minister by delaying the issuance of the regulations which are to be published in this book, has made it possible for shippers and carriers alike to

expose persons on board ships and the harbors in which those ships are loaded to whatever dangers there may be in naphthalene, without any hindrance from him. A. Yes, sure.

"Q. Does not that seem to you to be a strange attitude on the part of an official charged with the duty of preserving safety? A. I take it that apparently they don't (849) consider the danger very large, or even they don't see any danger perhaps.

"Q. If they don't see any danger, then what is the statutory authority for the proposed issuance of the regulation? A. The statutory authority must be in first instance the Schepenwet and in second instance the royal decree, and if naphthalene does not fall under any regulation of art. 94 or 99, not a single authority is entitled to make any regulation concerning naphthalene.

"Q. The fact that the shipping authority proposes to issue a regulation concerning naphthalene indicates a determination by the authority that it is entitled to issue such a regulation, does it not? A. It looks like they are entitled and that is perhaps why they quote art. 99, overlooking the fact that art. 99 mentions gas-tight containers.

"Q. And that determination of theirs, whether it is correct or not, in turn involves a determination that naphthalene falls within the definition of dangerous goods, does it not? A. I can't say that, for as I pointed out before there is a discrepancy between the reference to art. 99 on the one side and the close-woven bags (850) on the other side, and at last, if the minister should mention in his book to be published any regulation whiel is not in accordance with either the act or the royal decree, it is the duty of the courts to decide that this regulation is invalid."

• • • •

"Q. Do you not agree that negligent stowage of cargo, even though the negligent method is not (851) specifically

prohibited by a regulation, is a violation of your Netherlands maritime law? A. Yes. Not of the penal law but of the commercial code.

"Q. Embodied in Beerman exhibit 1? A. Negligent stowage is prohibited, of course.

"Q. I am asking you to assume negligence in the question I put to you, and I am asking you, if it is not a fact that negligent stowage violates the Netherlands Code of Commerce. A. Yes."

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(853)

Direct examination by Mr. Pyne:

"Q. I show you, Mr. Van Rossem, a letter which is dated 30 July 1954"—which has been here marked Libelants' Exhibit 35 for identification—"and ask you whether or not at my request you made any investigation with respect to that letter and its contents? A. Yes, I did."

Mr. Longley: Before we go on, I should now offer this letter in evidence. It is marked for identification solely heretofore.

(Libelants' Exhibit 35 received in evidence.)

Mr. Longley: Perhaps since it is now in evidence, I should read it to your Honor.

The Court: Yes, I would like to get the continuity.

Mr. Pyne: The translation is attached.

Mr. Longley: It is from the Inspector General for Shipping——

Mr. Pyne: It is signed by a subordinate, who signed it. It is from that office but it is not signed by the Inspector General.

Libelants' Exhibit 35 Read into Record

Mr. Longley: Well, it is signed "Inspector (854) General for Shipping, per B. E. Van Bruggen."

It is dated July 30, 1954:

"Reference: S. S. 'Black Gull'"—It is on the letterhead of the Inspector General of Shipping, written from The Hague.

"In reference to your letter"——

The Court: To whom is it addressed?

Mr. Longley: To John Hudig & Son, Lloyd's Agents at Rotterdam.

"In reference to your letter No. 47631 Z B of July 23, I inform you that to my regret it is not possible to make a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

"I therefore will limit myself to confirming that at the time of the loading of the S. S. 'Black Gull,' in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

"'Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.

(855)

"'Stowage may be on deck or under deck.

"'On deck, the naphthalene must be protected from the effects of the sun's rays and kept at a distance from the crew's quarters.

"'Below deck in a well-ventilated dry space.

"'In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable

gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naththalene).'"

* * * *

(866) * * *

Cross examination by Mr. Zisgen:

"Q. Coming now, Mr. Van Rossem, to your visit to the office of the Inspector General of Shipping on August 20th, I take it that that office did not deny that the letter which has been marked Beerman Exhibit 3 for identification"—now Libelants' Exhibit 44 for identification—"was authentic. A. No, surely not.

"Q. Did you ascertain by whom the letter had been signed? A. It had a signature. Mr. Metz told me, that the signature is of no importance, for the letter must have been written by somebody else.

"Q. Someone else than the person who signed it? (867) Who is the person whose signature appears on the letter? A. I don't know him personally but it is an engineer.

"Q. An engineer in the office of the Inspector General of Shipping? A. Yes, Mr. Van Bruggen happened to be the highest in command available at the moment this letter was signed.

"Q. That is the highest in command available at the office of the Inspector General of Shipping? A. Yes."

Mr. Pyne says, "And also limited to the particular time that the letter was signed.

"A. Yes, at the moment the letter was signed.

* * * *

(869) • • •

Deposition of Dr. A. Blussee Van Oud-Alblas

Mr. Pyne: I would like to read from the deposition of Dr. A. Blussee Van Oud-Alblas:

Direct examination by Mr. Pyne:

"Q. Where do you reside?

(Mr. Smith reads the answers.)

"A. At Rotterdam.

"Q. What is your occupation? A. I am what you might call a lawyer; we call it 'Advocaat'.

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(870)

"Q. For how many years have you been a lawyer? A. For 26 years.

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(871)

"Q. And you, like all lawyers, are licensed to practice law before all law courts in the Netherlands? A. Yes, including the Supreme Court.

"Q. During your legal career have you specialized in any branch or branches of the law? A. Yes, Maritime Law, marine insurance, and quite another area: expropriation law.

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(872) • • •

"Q. Was there in force in June and July 1952 in the Netherlands any general laws, rules or regulations concerning loading, stowing or carrying on vessels of dangerous cargoes? A. Yes.

"Q. Will you identify the law for us. A. You are talking about June and July 1952?

"Q. That is correct. (873) A. We then had regulations regarding dangerous cargo in the so-called Schepenbesluit which I have here.

"Q. Will you identify the article in which that regulation is contained and the page of the particular book?

Mr. Pyne: The page will be different, your Honor. We have a later edition which was identified with different paging. The part we are interested in here is identical with Libelants' Exhibit 34-A, the translation of Article 94. If that is agreed, I won't mark this book for the time being.

Mr. Longley: That is all right; you do not need to put it in twice.

Mr. Pyne: (Continuing reading)

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(874) • • •

"Q. In your opinion as a matter of law, would or would not naphthalene come within the provisions of the decree in force in June and July 1952 concerning dangerous cargoes?"

Mr. Zisgen: We withdraw the objection.

Mr. Pyne: (Continuing reading)

"A. I can only answer this question from the legal side.

"Q. That is all you are asked to do. A. In order to come under the regulations regarding dangerous cargoes, this crude naphthalene should conform with section 4 of art. 94.

"Q. When you say that crude naphthalene should conform with that section 4 of art. 94, will you explain to us

what you mean by that? A. That it should be a solid commodity which can easily be brought to combustion or which when heated (875) up to 70° C would give combustible gases.

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(879) • • •

Mr. Pyne: (Reading)

"Q. If crude naphthalene were a product not within the definitions of art. 94, would any Government official or Government employee have authority or any legal right to make rules or regulations concerning crude naphthalene? A. No, because art. 94 opens the possibility, in section 11, of the Chief Inspector of Shipping giving supplementary regulations regarding stowage, package and carriage, but this is limited to the commodities meant in this article. Therefore he has not this authority outside the article and (880) regarding commodities not meant in this article.

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(890) • • •

Cross examination by Mr. Zisgen:

"Q. You agree that the maritime law of the Netherlands is based upon the same general principles as the Hague Rules? A. You should put it this way, that certain principles especially regarding stowage and care for the goods which you find in the Hague Rules you will also find in the Netherlands Commercial Code.

• • • •

"Q. Under the Netherlands Maritime Code an ocean carrier is obliged to properly and carefully (891) stow and carry the goods which she accepts for carriage, is she not? A. Those words you will not find in the Commercial Code, they are out of the Hague Rules.

"Q. Quite right. Does the essential obligation of the carrier under the Netherlands maritime law differ from the statement I have just made? A. The law says that the contract of carriage obliges the carrier to exercise due diligence for the preservation of the goods. It further states that the carrier is not allowed to stipulate that he shall not or only to a limited amount be liable for loss or damage caused by amongst others rough handling or insufficient custody of the goods.

"Q. Would you not as an attorney interpret the obligation of due diligence which you have just read us from the Code as roughly the equivalent of proper and careful stowage? A. Yes.

"Q. And you have told us that the carrier may not by contract exempt himself from that obligation, have you not? A. Yes.

"Q. That obligation extends, does it not, to (892) goods carried on deck with the shipper's permission? A. If the shipper has given the express permission of the goods to be carried on deck he has no complaint if damage is caused by the simple fact that the goods were on deck. Apart from that the carrier is under obligation for right handling and sufficient custody, which involves proper stowage.

"Q. In determining whether stowage of goods is or is not proper stowage, the Netherlands courts take into account the nature and the characteristics of the goods themselves, do they not? A. I think that the Netherlands law courts take into consideration everything which would be of importance in determining whether stowage is right or not.

"Q. And that would include the nature and characteristics of the goods, would it not? A. Among other things.

"Q. And it would also include what other goods were in stow on the ship, would it not? A. Yes.

"Q. And that would be true whether those other goods had been stowed at a Netherlands port or at a foreign port, would it not? (893) A. Yes.

"Q. Now, you agree, do you not, that whether a particular shipment of solid goods as distinguished from liquids comes within the definition in art. 94 is a matter of fact? A. I think this question has to be judged on the basis of the terms of art. 94.

"Q. Precisely. And art. 94 section 4 has two descriptions, does it not? In the first part, the first description is contained in the words 'easily inflammable', is it not? A. Yes.

"Q. And you agree, do you not, that whether or not particular goods are easily inflammable is a question of fact? A. Yes.

"Q. Do you not also agree that the question of whether particular goods will evolve combustible gases when heated to 70°C is a matter of fact? A. Yes.

"Q. And that fact will not be changed by the actual practice of people handling the goods, will it? A. The facts may not be changed, but it is the question whether all goods which might comply with (894) those facts would really be considered as coming under this section of art. 94. I pointed out already that to my opinion naphthalene, if it would be liable to combustion or even if it would develop combustible gases when heated up to 70°C should be considered as coming under this article. The practice I know and the practice which is common knowledge regarding those goods is that they are not considered to fall under this article.

"Q. Then what you are telling us is that the meaning of these words in section 4 art. 94 is to be determined not by the courts but by the practice of persons handling the goods, are you not? A. I think that when the court has to judge this question it will take all things into

account and it might certainly attribute value to the way in which this commodity as a matter of fact has been handled generally and for a very long time.

"I want to point out in this respect as regards the transport of this commodity by Netherlands vessels, I am not talking now about foreign vessels, those ships are under the constant control of the Shipping Inspection, subsequent to art. 10 Schepenwet the regulation of the Schepenbesluit. (895) For many years already Netherlands ships are carrying naphthalene and crude naphthalene not in gas-tight containers. This must be perfectly well known to the Shipping Inspection and if this would be in direct violation with a strict article like art. 94 section 4, the Shipping Inspection should have jumped in immediately years ago already.

"Q. That is the basis upon which you reach the conclusion that naphthalene is not within the purview of subsection 4 of art. 94? A. Yes. It makes it highly questionable to me at least.

"Q. But it is a matter of your opinion. A. Naturally.

"Q. You agree, do you not, that sub-section 4 of art. 94 contains no such exemption in its own terms? A. No.

"Q. It does not? A. No, it gives very strict rules to be observed.

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(903) • • •

"Q. Well, then, despite the fact that the book which the minister has been ordered to publish has not yet been published, am I correct that since 1939 at least there has been in the Inspector General of Shipping the (904) power to issue so called supplementary regulations governing the transportation of dangerous goods? A. Certainly, you will find it in section 11A, Art. 94 of the old Schepenbesluit.

Deposition of Dr. A. Blussee Van Oud-Alblas—Cross

"Q. The one in effect in July 1952? A. Yes.

"Q. And provided that the Inspector General proceeds in accordance with the law, he could have at any time within that period since 1939 made valid binding regulations for the transportation of naphthalene? A. If this would be dangerous cargo in accordance with art. 94 subsection 4.

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(915) • • •

Deposition of Capt. C. A. W. Bos

Mr. Pyne: This is Captain C. A. W. Bos, • • •

Direct examination by Mr. Pyne:

"Q. Captain Bos, will you tell us where your residence is? A. In Rotterdam.

"Q. And you are a Dutch citizen? A. Yes, sir.

"Q. By whom are you now employed? A. By Holland-America Lines.

"Q. For how many years have you been employed by Holland-America Line? A. For 28 years.

"Q. And during that period of 28 years will you tell us in what capacity or capacities you have been employed? A. First as an apprentice officer, then fourth, third, second and chief officer, and after that inspector of the Nautical Department and now I am chief of the Nautical Department.

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(918) • • •

"Q. While you were at sea and on the vessels on which you served, can you tell us how and where the naphthalene was stowed or carried, and I am speaking of crude naph-

thalene in bags particularly. A. It was always stowed on deck on the foreship and the aftership, never under deck.

"Q. With respect to whether or not it had any cover, what was the situation? A. When I served on the ships it was never covered.

"Q. What was the situation in that respect with the manner and place of stowage during your period of service as an inspector? (919) A. About six years ago, it may be five or seven years, some of the shippers asked to cover it up against rain or sea water, so after that time they covered it up, they don't wrap it all up.

"Q. Will you explain a little more fully and precisely what you mean by that? A. It is not all covered, only on the top side for rain water. When you wrap it up it is all underneath.

"Q. And that was done in such instances as when the shipper requested it? A. Yes.

"Q. In the absence of such request of the shipper, what is and was the situation? A. Well, it was that we did not cover it up when the shipper did not ask for it, but the last one or two years we mostly cover it up.

* * * *

(927)

Cross examination by Mr. Zisgen:

"Q. Do I understand that since approximately 1953 most of the shipments of bagged naphthalene carried on deck on Holland American Line ships have been covered? A. Yes.

"Q. And that has been true in that period whether the shippers requested it or not? A. The shippers requested us to do it.

"Q. They requested you to do it in some instances? A.

Yes, that started about 5 or 6 years ago. The last time we did it before they asked it.

"Q. So that the last two years even without the shippers' request most of your shipments of naphthalene carried on deck on Holland American Line ships have been covered? A. Yes.

"Q. Has that been limited to the last two years? A. It may be two and a half years, I don't know that so exactly."

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FEITJOV ANDERSEN, previously sworn, called on behalf of the Petitioner, testified (928) through the interpreter as follows:

Direct examination by Mr. Pyne:

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(937) • • •

Now, during the voyage after Rotterdam to the United States, was any inspection of any kind made of the cargo on the stowage? A. We saw all the cargo on the deck all the time, and rounds were made on the deck all the time—that is very day.

Q. Who made the inspections? A. The chief officer, and I was also around.

(938)

Q. And what was done on those inspections, how were they inspected? A. We saw that the cargo was good and that the lashings were in good order.

Q. I believe you have already testified, in fact I know you have, to the temperatures recorded in the log book and taken in the shade outside the pilothouse; is that cor-

rect? A. Yes, the temperatures were taken in the shade outside of the wheelhouse.

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(939) • • •

Q. Coming to the night of the fire, when did you first hear of any fire, and where were you? A. A little while after 11 o'clock at night.

Q. And where were you when you learned of it? A. I was on the way out from my room, my cabin.

Q. Will you explain where your room was with respect to the navigation bridge or wheelhouse? A. My cabin was on the lower bridge underneath the navigating bridge.

Q. I believe that is shown, is it not, Captain, on the ship's plan? Do you want to look at the plan? A. Yes, it is shown on the plan of the ship.

Q. How did you learn of the fire? A. I was advised by the third officer.

Q. And what did you do? (940) A. I ran, together with the third officer, out on the sun deck. I ran out on the lower bridge and from there onto the sun deck, and had a quick look as to where the fire was, and from there I ran up on the bridge, and ordered the man at the helm, at the wheel, to put the helm hard aport.

Q. Captain, you said you went out on the lower bridge. On what level with respect to the deck of your cabin or your quarters is the deck of the lower bridge? It was on the same level.

Q. And this sun deck that you ran out on, where is that, the level of that deck, with respect to the level of the lower bridge? A. The sun deck is a continuation of the lower bridge further aft.

Q. Now, you say you took a look from the sun deck at the fire. Tell us what you then saw. A. I saw a small flame and some dark smoke.

Q. Did you see and could you tell where that smoke and flame were, or were coming from? A. I didn't localize it. I just looked down and ran up on the bridge.

Q. How was the engine telegraph when you got to the (941) bridge? A. Full speed ahead.

Q. And do you know, or can you tell us, what wind there was, if any, and from what direction with respect to the "Black Gull" did it come? A. It was a light wind in on the port bow, about a couple of points.

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(943) • • •

Q. You were telling us yesterday about the stowage of the naphthalene and you testified that the stowage was examined during the voyage, and you also said that you yourself and the chief officer attended those examinations. I will ask you if you will tell us with respect to those bags of naphthalene as they were stowed what their appearance was, that is, whether they were a solid stow and what they looked like? A. The bags looked as always with naphthalene cargoes as if they had been used before.

Q. That is, speaking of the condition of the bags themselves that you are answering? A. Yes.

Q. Will you describe the appearance of the bags (944) themselves? A. The bags looked as they had looked before, and they appeared to have been exposed to rain and sun, and they were also stained.

Q. Can you tell us whether they were new or old or used bags, or secondhand? A. They looked as if they had been used before.

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(949) • • •

Q. Except for approving a proposed stowage plan that was shown you, did you have anything further to do with stowage plans? A. All the time during the loading of the

ship I conferred with Captain Hollaar and at such times the stowage plan was always there.

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(959) • • •

Cross examination by Mr. Longley:

Q. Captain, when you first reached the deck, when you knew there was a fire, you told us you glanced at the area where the fire was burning. (960) A. Yes.

Q. And you found the fire burning on the top of the naphthalene on the port side abreast of No. 4 hatch, did you not? A. Yes.

Q. From that point on, until you were driven from the bridge, you remained on the bridge, did you not? A. No.

Q. What did you do, Captain? A. I was on the bridge, I was on the boat deck and I was on the decks—I was everywhere.

Q. Supervising the fighting of the fire, you mean? A. Yes.

Q. And the efforts to extinguish the fire were directed on the naphthalene, on the port side at No. 4 hatch for the first hour or so, isn't that true? A. Yes.

Q. You yourself did not get down on top of No. 4 hatch at that period, did you? A. Yes, I was down there.

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(962) • • •

Q. Captain, you took no part yourself in the stowage of this naphthalene either at Antwerp or at Rotterdam, did you? A. I supervised the stowage when I took my rounds on the deck.

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(963) • • •

Q. Well, all right. Now, after the ship sailed, Captain,

do I understand that you went down and carefully examined this stow of naphthalene eight or ten times a day, or what did you do? A. No.

Q. Well, what did you do about examining it? A. I had my rounds on the deck every now and then.

Q. What does that mean, "every now and then"? A. That may mean once a day or once every other day.

Q. What was there about this naphthalene that (964) disturbed you, that caused you to make any particular examination of it, Captain? A. There was nothing frightening me, but I always have my rounds like that.

Q. Well, isn't it the truth of the situation, Captain, that as you walked over this ship you glanced at this stow, and that is all you ever did about it? A. We see a lot when we take our rounds. They are not just glances.

Q. Did you get up on top of this stow and put your hands down between the bags to see that there were no crevices there, Captain? A. No.

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(965) • • •

Q. You spoke during the course of stowage of comparing with somebody, but I did not get the name. That was Captain Hollaar, was it not? A. Yes.

Q. And it was Captain Hollaar who laid out the stowage and arranged as to where it was to be stowed? (966) A. With my consent, yes.

Q. And Captain Hollaar is here in the courtroom? A. Yes.

Q. Now you have told us that in your opinion it was impossible to comply with the United States Coast Guard regulations in so far as concerns stowage and carriage of naphthalene. A. No.

Q. You did not say that?

The Interpreter: The answer is No.

Q. Do you mean you did not say that? A. I said that as regards carrying of naphthalene on deck it was impossible.

Q. And you are quite right. Why did you carry it on deck then, Captain? A. Because it is allowed to carry naphthalene on deck.

Q. You have told us that you could not comply with United States Coast Guard regulations in the stowage of naphthalene on deck, and I ask you, as you say you could not comply with the regulations, why did you carry naphthalene on deck at all? A. The Coast Guard regulations apply to all waters.

Mr. Longley: I do not quite follow that answer.

(967)

The Interpreter: I am asking whether he had completed his answer.

The Witness: I will ask to have the question read again.

(Question read.)

Mr. Longley: May we have a recess at this time, and let the witness think that over, your Honor? He seems to want to give it a little thought.

The Court: Ask the witness whether he wants to do that.

The Witness: Yes.

The Court: The court will take a short recess.

(Short recess.)

Q. Captain, are you now ready to give your answer to the last question I put to you? Do you remember what it is? A. Yes.

Q. All right, let us have it. A. The Coast Guard regulations, as I said, apply to all waters, and the regulation about sun roof will have to be complied with in the het

regions, but in the North Atlantic we do not have such temperatures.

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(969) • • •

Q. You knew, did you not, Captain, that if tarpaulins were used in connection with the stowage of naphthalene that they would become impregnated with the odor of naphthalene? A. Yes, with the odor of naphthalene.

Q. And therefore the tarpaulins could never be (970) used again except in relation to naphthalene; isn't that so? A. Yes.

Q. And you had received instructions from Black Diamond in connection with the care to be used in connection with rope slings that had been used over a stow of naphthalene; isn't that true? A. Yes.

Q. And that was because the rope slings would become impregnated with the odor of naphthalene when used over the stow? A. Also because these nets were particularly for the use of naphthalene stows.

Q. And you received directions not to use dunnage wood under a deck load of naphthalene because the dunnage wood would become impregnated with the odor of naphthalene, isn't that true? A. I want the question again.

Q. (Question read.) A. Not particularly.

Q. Isn't there a letter there that deals with that, Captain, or is that the letter you did not receive? I am referring to this letter dated May 29, 1951, from Black Diamond Steamship Corporation addressed to all masters, deck officers, domestic and foreign agents, a part (932) of Libelants' Exhibit 38. Didn't you receive a copy of that letter, Captain? A. (Without interpreter) Yes, I did.

Q. And in that letter from the Black Diamond you were told not to place dunnage on the main deck prior to loading on deck naphthalene; isn't that true? A. (Without interpreter) Yes.

Q. And you were directed to stow it directly on the deck; isn't that true? A. Yes.

Q. Then you were told after the discharge of naphthalene all the dunnage is to be collected and set aside on the deck, secured, and later disposed of? A. Yes.

Q. You knew the purpose of that direction, did you not, Captain, is because the dunnage would become impregnated with the odor of naphthalene? A. That was one of the reasons.

Q. What is the other reason? A. The other reason was that naphthalene is stowed as well on the deck as on dunnage wood, if not better.

Q. The Coast Guard regulations, Captain, provide that naphthalene if stowed on deck may be stowed on deck under cover or on deck protected. You knew (972) that, did you not? A. I knew that naphthalene should be stowed on deck protected.

Q. Didn't you also know that the regulations permitted you to stow it on deck under cover? A. By reading the rules you will find that naphthalene shall be protected, not covered.

Q. No, I am not talking about that now, Captain. I say it provides that it may be put under cover, but in any event you had no means on the "Black Gull" of stowing the amount of naphthalene you were carrying under any superstructure; isn't that true? A. We had no superstructure of that kind.

Q. And of course you could not stow it in the forecastle? A. No.

Q. Or in the bridge house, or the poop, or a deck house? A. We had no such places.

Q. So the only thing you could do was to carry it on deck? A. Yes.

Q. Out in the open? A. Yes.

Q. Now you say it is impossible to comply with the

Coast Guard rules. Reading from the Coast Guard rules, 146.03-34 (b):

> "On deck protected means the articles may be stowed on the open weather deck of a vessel. (973) It is required that dangerous cargoes stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnage."
>
> Do you read English enough to follow that, Captain?
>
> (Interpreted to witness.)

Q. (Continued) I also call to your attention, Captain, provisions of 146.27-6, reading:

> "Protection for On Deck Stowage. Hazardous articles that are permitted stowage on deck in open or on deck protected, may be protected by the use of structural erections, awnings or tarpaulins."
>
> The Interpreter: We have no real equivalent to your word "hazardous."
>
> Mr. Longley: Dangerous.
>
> The Interpreter: No.
>
> Mr. Longley: Use the word "hazardous" then.
>
> (Interpreted to the witness.)

(974)

Q. You have told us that no effort was made to cover the naphthalene on the deck of the "Black Gull" with tarpaulins. A. Yes.

Q. And you have also told us that——

Do you want to add something, Captain? A. Yes. The Coast Guard regulations also say that naphthalene should be well-ventilated, and it cannot be well-ventilated if it carried under cover.

Fritjof Anderson—for Petitioner—Cross

Q. Well, that doesn't particularly answer my question, Captain, but I may tell you that I find nothing in the Coast Guard regulations providing what you have just said, but they will speak for themselves.

Mr. Longley: (To the interpreter) Will you put my question?

(The interpreter speaks to the witness.)

Q. You have also told us, Captain, that on the mast-house you had a stow of drums of chemicals that you did protect by a tarpaulin.

* * * *

(975) * * *

Q. And you told us that those drums were protected by tarpaulins. A. Yes.

Q. And those tarpaulins were lashed to stay in place, over the drums, were they not? A. Yes.

Q. Why couldn't tarpaulins be lashed over the naphthalene, Captain? A. They could have been lashed, but as I told you before, there would have been no ventilation.

Q. Indeed you lashed tarpaulins over naphthalene at times, you have told us, Captain? A. Yes.

Q. And you did that because you said one or two of the shippers asked for it? A. Yes.

Q. What did you do about ventilating that naphthalene that was covered with tarpaulins lashed down over it? A. The tarpaulin was put on top hanging down from (976) the sides.

Q. You mean it wasn't lashed? A. It was lashed.

Q. That tarpaulin was not carried off in any bad weather, was it, Captain, when you carried it over the forward deck? A. Yes.

Q. The tarpaulin was carried away? A. It was blown up, or torn up.

Q. That naphthalene, I think you told us before—and you will correct me if I am wrong—when you carried it, you carried it on the forward deck? A. Yes, it was carried on the forward deck. It was small parcels.

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(979) • • •

HARVEY LYNGAAS, called as a witness on behalf of the Petitioner, having been first duly sworn through the interpreter, testified as follows:

Direct examination by Mr. Pyne:

Q. Mr. Lyngaas, what is your occupation? A. Chief officer.

Q. Of what vessel? A. The "Black Eagle."

Q. That vessel is in the Black Diamond Corporation service? A. Yes.

Q. And you were formerly a member of the crew of the "Black Gull"? A. Yes.

Q. In what capacity? A. I signed on as third mate.

Q. When did you sign on? A. In February, 1949.

Q. Did you remain an officer on the "Black Gull" from then down til the time of the fire in July 1952? A. Yes.

Q. Before going on the "Black Gull" did you serve on any other vessels in Black Diamond service? A. No.

Q. While on the "Black Gull" did you always remain third officer? A. I was promoted in August 1949 to second officer and again to chief officer in 1951.

Q. Do you remember what part of 1951 you became chief officer? A. In April 1951.

Q. And you remained chief officer, then, on the "Black Gull" until the July 1952 fire? A. Yes.

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(982) • • •

Q. Now, during the voyage of the "Black Gull" on which this fire occurred, did you make any inspection or inspections of the cargo, and particularly the deck cargo? A. Yes.

Q. Now, would you tell us what inspection or inspections you made, when you made them and what you did? A. I had one proper inspection round, only concerned with inspecting the cargo every day.

Q. And on that inspection would you tell us what you did in the way of inspection? A. I checked the nets, I checked the lashings by means of which the yacht had been lashed, I check (983) the scuppers—I went along the bulwark and inspected the scuppers.

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(991) • • •

Q. On this plan I am going to point out to you a structure which is shown on the forward part of the (992) weather deck. Was that structure on the "Black Gull" on this voyage? A. No.

Q. I will ask you if you will, so we can later identify it, to take this blue pencil and mark that structure that we are now talking about. A. (Witness marks "X" with blue pencil.)

Mr. Pyne: May I offer the diagram as an exhibit, your Honor.

(Marked Petitioner's Exhibit Z in evidence.)

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(993) • • •

Q. With respect to the condition of the bags in which the naphthalene was on the deck, will you describe the

appearance and condition of those bags as you saw them? A. They were stained and they were second-hand bags.

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(995)

Q. And where were you when you first learned or heard of the fire? A. I was asleep.

Q. How did you learn of it and what did you do? A. One of the stewardesses who was in the bathroom in the after part of the midship house on the boat deck had discovered the fire and she came and woke me up and told me there was a fire.

Q. Where were you asleep? A. In my sleeping cabin which is in the midship building on the boat deck, on the starboard side in the fore part.

Q. And when you were awakened, where did you go, what did you do? A. I ran across the alleyway and out onto the boat deck on the port side and out on the deck. From there I went on to the bitt and on to the stow.

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(997)

Q. On that occasion that you got on top of the stow, will you describe what you saw? A. I saw there was a fire in some of the bags, aproximately in the middle of the stow, about abreast or a little forward of the center of hatch No. 4.

Q. Now at that time did you see either the side of the stow, either the side near the hatch coaming or the side near the bulwarks? A. No, not then.

Q. Well, tell us what you did from that point on. A. As soon as I had got onto the stow, the crew were coming from the poop, from the poop house. I told them to connect the hoses on the deck and one was to run down into the engine room and order water and good pressure.

Q. That is, you ordered that man to do that? A. (In English) Yes.

Q. What then did you do, where did you go? A. I then ran back onto the boat deck, took out the hoses that are stored in the cupboard on the port side, connected those, and in a moment I was about to connect water with that.

Q. What occurred then? What did you do, where did you go? A. I took the hose down from the boat deck (998) and on to the weather deck, when I then came down in the front of the stow, at the front of the stow I could see this side of the stow and I could then see that it was burning, I think it was in the third bag from the top.

Q. Now on the top of the stow over that place where you say the third bag from the top was burning, what was the condition of the top of the stow?

The Interpreter: May I please have that question read?

(Question read.)

(The witness speaks to interpreter.)

The Interpreter: The answer is "No," but I suppose it is difficult——

Q. Let me ask the question again.

You state that when you got down onto the weather deck you then had a view of the side of the stow, is that correct? A. Yes.

Q. Which side of the stow did you then see? A. The side abreast of No. 4 hatch.

Q. And with respect to that side what did you see? A. It was burning in the third bag from the top. There was no fire in the bags above but then up to the top of the stow.

(999)

Q. Were you present when the starboard lifeboat was launched? A. Yes, sir.

Q. About how long would you say it was after you first heard of the fire that the starboard lifeboat was launched? A. Approximately half an hour.

Q. During the preceding half hour did you see the conditions on deck in the vicinity of the lifeboat? A. Yes, there were plenty of smoke and fog and I think that the port lifeboat came on fire about ten minutes after we had discovered the fire.

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(1004) • • •

Cross examination by Mr. Longley:

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(1005) • • •

Q. When you first went on deck and discovered the fire you had four hoses playing on the area where the fire was burning, did you not? A. Yes.

Q. And you also used fire extinguishers? A. Yes.

Q. At the time the area of burning on the top of the stow was some three feet in diameter, was it not? A. On the top, yes.

Q. And in spi' of all of the efforts which you and your men directed, the fire spread through the stow with great rapidity, did it not? A. Yes.

Q. Eventually the naphthalene melted and a molten river of fire flowed over the after deck, did it not? A. Yes.

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(1006) • • •

Q. Had the speed with which this fire spread surprised you, Chief? A. Yes.

Q. You had received no warning, then, as to the great danger which the carriage of this cargo presented? A. No, I cannot say we considered it a great danger.

Harvey Lyngaas—for Petitioner—Cross

Q. And you had received no warning of danger from anyone from on shore? A. When I first started carrying this material back in 1949, I had a conversation with Captain Hollaar, but I cannot remember that it has been said that it was very dangerous.

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(1007) • • •

Q. That isn't quite accurate, is it? Didn't you sometimes cover the naphthalene when it was stowed forward, that is, covered with tarpaulins?

The Interpreter: May I have the question again, please?

(Question read)

A. We had one instance—it was a small cargo of 40 tons stowed on both sides of the foredeck, and those parcels were covered.

Q. They were covered with tarpaulins which were lashed down over the stow? A. Yes.

Q. And that stow that you covered the tarpaulins (1008) with was on the forward deck at the bow, isn't that so? A. No, it was right in the—it was on each side of No. 3 hatch.

Q. On the forward deck? A. On the forward deck.

Q. You had no trouble in bringing that cargo forward to New York, did you? A. Yes.

Q. What was the trouble? A. We didn't manage to keep the tarpaulins over the stow.

Q. "We didn't"?

The Interpreter: "We didn't manage."

Q. On this voyage of the "Black Gull" you had the tarpaulins lashed over some drums of chemicals on the after deck, did you not? A. Yes.

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(1016) • • •

Q. Chief, I will ask you if you did not give this testimony which I point out to you in this transcript (handing to witness).

(Witness examines)

Mr. Longley: While he is reading that, I will read you the translation, if your Honor please, which Mr. Rein has agreed is a proper translation.

"When the accident occurred the witness came on deck as soon as the alarm signal had been given, and he then saw fire and smoke approximately in the middle of the surface on the stow of naphthalene which was placed against the bulwark and had a width of about 17 feet. From this point the fire spread quickly."

A. Yes.

Q. Nowhere in the testimony at Oslo did you say anything whatever about seeing flames on the third (1017) tier of bags down from the top next to the No. 4 hatch, did you? A. No.

Q. What you said, which you have just read there, is what the situation was on this ship, isn't that so? A. This is what I saw when I came on the deck.

Q. And what you saw was a flame burning approximately in the middle of the top of the stow and you saw that flame spread quickly from the point where you first saw it, and that is all you ever did see, isn't it?

The Interpreter: May I have the question again?
(Question read)

A. No.

Q. Why did you give the testimony you did at Oslo, Chief? A. What is here referred to is what I said about

what I saw when I first came onto the deck afterwards—I had the hoses connected and when I had come down on the hatch, I saw it burning on the side.

Q. But you never told the Norwegian investigating officer who was interrogating you anything about that, did you? (1018) A. As far as I remember, there was no question about it. I was asked what I saw at the moment when I came on deck.

Q. Then you and the master and the second officer prepared a report about the fire, didn't you? A. Yes.

Q. There is nothing in that statement prepared by the master, you and the second officer that gives any information whatever about what you now say you saw when you had the hose, is there? A. Yes, but this is not detailed testimony.

Q. What is that? A. This is not detailed testimony.

Q. This is the statement which you, the master and the second officer prepared, isn't it—a report, I should say? A. Yes.

Q. And you were required by Norwegian law to prepare that report and give to the investigating officer, were you not? A. No, the captain has to make a report and I have to countersign it.

Q. You have to what?

(Answer read)

(1019)

Q. Well, this is the report which you did countersign, isn't it? A. Yes.

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(1020) • • •

Q. Chief, you commented that the bags of naphthalene stowed on the "Black Gull" were secondhand bags and showed stains on the exterior. A. Yes.

Q. The stains were oil stains, were they not? A. They were tarlike stains from the naphthalene.

Q. Let me see. Raw naphthalene—I guess the term is "crude"—crude naphthalene has a lot of creosote in it, isn't that so, or don't you know? A. I dare not have any opinion on that.

Q. In any event, the stains you saw on the bags you knew came from the naphthalene? A. Yes, it has been like that on all cargoes we have had.

Q. And you put your hands on the stains and found them sticky, is that what you mean when you say (1021) it was a tarry substance? A. No, I smelt it.

Q. Smelled the stains, you mean? A. Yes.

Q. And those bags with the tarry stains on the exterior were that way when the bags were stowed at Antwerp and Rotterdam, isn't that so?

The Interpreter: May I have the question, please?

(Question read)

A. Not all of them.

Q. How many? How big a percentage? A. I cannot tell.

Q. Well, I won't try to stick you down to the percentage, but did most of them have the stains? A. Yes, of the ones I saw on the top of the stow, I should say that about 50 per cent had such stains.

Q. That did not come as a surprise to you because most of the naphthalene you had carried on prior voyages had similar stains, is that what you mean to tell us? A. Yes.

Q. You had met Captain Hollaar, did you not? A. On this voyage?

(1022)

Q. Yes, on this voyage. A. Yes.

Q. He was on board at the time the stowage was going forward, both at Antwerp and at Rotterdam, isn't that true? A. Yes.

Q. And you and the captain went over the layout of stowage with Captain Hollaar, did you not? A. Yes.

Q. And Captain Hollaar was on board after the cargo of naphthalene had been stowed and made fast with the rope slings, isn't that true? A. Yes.

Q. This naphthalene gave off a strong odor, did it not, as the vessel lay both at Rotterdam and at Antwerp? A. Yes.

Q. And that odor continued, of course, throughout the voyage, did it not? A. Yes.

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(1040) • • •

MARION W. LOUSE, called as a witness on behalf of the Respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. I believe, Captain, that as of January 1, 1956, you had been retired from Black Diamond Steamship Corporation, is that correct? A. That is right.

Q. Prior to your retirement, Captain, in what (1041) capacities and from what dates did you serve with Black Diamond Steamship Corporation? A. I joined the Black Diamond Steamship Corporation in 1924, January, as chief officer, and served until December 1924 as chief officer, at which time I was promoted to master on December 2, 1924, remaining in that capacity until March 30, 1932, at which time I was given a shore position as of April 1, 1932, to June 8, 1934, at which time I was again put on a ship as master at my request, on June 9,

1934, and remained in such capacity until March 18, 1938, at which time I was again given a shore position on March 19, 1938, to March 30, 1941.

April 1, 1941, I again went to sea as master, remaining in that position until May 6, 1942, at which time I went in the United States Navy from May 8, 1942, to June 3, 1946; at that time, being released from active duty, I again joined the Black Diamond Lines on June 15, 1946, to December 31, 1955.

Q. What was the last active position you held with Black Diamond? A. Operating manager.

Q. And how long did you hold that position, Captain? A. Nine and a half years.

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(1050) • • •

Q. Captain, what in your opinion today is the proper method of stowing crude naphthalene? A. The method that we are presently using in the Black Diamond and that we have been using in the Black Diamond over all these years in my opinion is the proper and safe manner in which this cargo should be carried.

Q. Why do you not think that crude naphthalene on deck should be covered with tarpaulin? A. So that the gases given off by the naphthalene will not be confined to the stow of naphthalene.

Q. Why do you believe the cargo should not be protected from the sun's rays by an awning? A. There again you would be harboring, enclosing the vapors arising from the naphthalene, which is going on all the time.

Q. Do you think, Captain, that an awning would be a practical erection over deck cargo on vessels engaged in the North Atlantic trades? (1051) A. No.

Q. What do you think would happen to the awning? A. I don't think it would survive the voyage. I am sure; it would be very doubtful.

Q. Why do you not recommend the erection of such dunnage or ceiling sun shed over the commodity? A. That would not be advisable, for the fact that if you encounter heavy weather, which you can expect almost on every North Atlantic crossing, it would become dislocated and it would become a serious hazard, floating around the deck, with the hatches, the various pipes and vents coming up through the main deck or weather deck, if some of these be open, flooding cargo compartments, and other damage naturally resulting from a lot of dunnage and wood floating around on deck.

Q. Captain, are you and were you in 1952 familiar with the United States Coast Guard regulations with respect to the stowage of crude naphthalene? A. Yes.

Q. How is crude naphthalene classified by the United States Coast Guard? A. As a hazardous article.

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(1063) • • •

Q. Since 1952 has there been any change in Coast Guard's attitude towards the carriage of crude naphthalene on Black Diamond vessels? A. Yes.

Q. Will you explain to the Court what that change has been? A. The change has been in this: At Norfolk, Virginia, vessels arriving at Norfolk with naphthalene on deck for another port, say Baltimore or Philadelphia or another port beyond Norfolk, that naphthalene they (1064) have required us to cover with a tarpaulin.

Q. Commencing at about what time, datewise, was that request of Coast Guard made? A. Well, I would say the last part of 1953.

Q. Has there been any other change in Coast Guard's attitude other than at Norfolk? A. Yes, the same thing has been at Baltimore and at Philadelphia, and very recently at Boston.

Marion W. Lohse—for Respondents—Direct

Q. Has there been any request by Coast Guard in New York for you to change your method of stow? A. No.

Q. Now, Captain, will you describe——

The Court: Just a second.

By the Court:

Q. Where naphthalene is destined for Norfolk or Baltimore or Philadelphia, or Boston, on deck, is it required that it be covered with a tarpaulin? A. By the New York authorities, do you mean?

Q. No, no, by the Coast Guard authorities in each of those ports, or is it only where it is bound for an outport? A. It is only where it is bound for a proceeding port or the next port.

I might add to that, your Honor, that the (1065) naphthalene is for the port which it is consigned to as the first cargo discharged from the ship—so the covering, if it was on there, you would have to take it off to discharge it

Q. But you are not required as you are bringing that cargo into Norfolk to bring it in covered? A. If it was to remain on the vessel, sir, it would have to be covered.

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(1066) • • •

Cross examination by Mr. Longley:

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(1070) • • •

Q. Didn't you tell us that in your opinion (1071) that it was improper to put a cover over a deck stow of naphthalene? A. I don't think I used the word "improper."

Q. No, that word is mine. A. I don't think I intended that. What I intended was I didn't think it was advisable.

Marion W. Lohse—for Respondents—Cross

Q. And you thought it was inadvisable, as I understood you, because of a possible accumulation of gases, isn't that the situation? A. That's right, yes, sir.

Q. You know, do you not, that Black Diamond ships sometimes in fact did cover deck loads of tarpaulins—with tarpaulins—deckloads of naphthalene, I mean, with tarpaulins? A. Not deck loads, no.

Q. I don't mean a whole deck load but part of naphthalene on the deck—you know—sometimes was covered with tarpaulins? A. I think it was on one or two occasions.

Q. Wasn't the same danger presented there as that you are not telling us about? A. No, because the amount of naphthalene involved which was covered was entirely of such a small amount that I don't think you had the same problem.

(1072)

Q. The regulation we are talking about calls for a covering of naphthalene by a deck erection, by dunnage or by a tarpaulin; you are familiar with that, are you not? A. Yes.

Mr. Pyne: I object to that question, your Honor. There is no "cover" in those regulations.

Mr. Longley: Well, I don't care what you call it.

Q. You are familiar with the regulation we are talking about. A. Yes.

Q. There is nothing in any regulation of which you are aware, is there, that requires a tarpaulin to completely surround a stow of naphthalene so that there would be no ventilation? A. There is none of the regulations of the Coast Guard which clearly define what you are trying to ask me now, whether or not it is completely wrapped up or enveloped in a tarpaulin.

Q. If you put a tarpaulin over the top of a stow of

naphthalene, in what way does that impede the ventilation? A. It is bound to because the gases can't rise. Further than that, you wouldn't have proper ventilation (1073) or circulation.

Q. Well, I asked you about impeding the ventilation because the gases can't rise, you say? A. And you would cut the circulation of air or wind about it.

Q. There is nothing to prevent you, is there, to so stow the cargo that the gases could escape at the side and still have a cover over the top? A. We have it stowed so that the gases can escape at the side and the top.

Q. How? A. The naphthalene is stowed free of the bulwark, free of the hatch and free at each end.

Q. Then a tarpaulin over the top doesn't particularly impede the escape of gases, does it? A. Yes, it does.

Q. You just told us, as I understood you, that there is a method for gases to escape at the side. A. Some.

Q. And of course you can have as much—you can afford as much facility as you want for the escape of gases by leaving apertures through the stow, isn't that so? A. No, that is not so.

Q. Well, on your ships where you carried naphthalene (1074) on deck, you left a space in the bottom tier, didn't you? A. Yes.

Q. There is no reason why you can't leave spaces in other tiers if you want to, is there? A. Yes, there is a reason.

Q. What is it? A. I don't think the stow would remain—I don't think you could transport it safely. I think the stow would collapse on you.

Q. You don't think that a stow of bagged cargo can be so prepared that there is a ventilation through the mass of the stow, is that what you are telling us? A. Not a bagged cargo, but this particular cargo.

Q. Well, what is different in this bagged cargo from any other bagged cargo? A. Well, it's—it's this different,

that it is stowed away from bulkheads, it has no support on the sides or on the ends, and the compactness of the stow has got to be made within the goods itself.

Q. Well, Captain, you are stowing cargo all the time in masses and providing ventilation through the center, isn't that true? A. Some cargoes.

Q. You can do it, if you want to, with any cargo, can't you? (1075) A. I don't know whether you could or not.

Q. Now, you tell us that you have been to sea so many years, going through the grades up to master and you have been operations manager.

I ask you, Captain, don't you know of your own experience on innumerable occasions where bagged cargo has been so stowed that you have afforded ventilation through the mass of the stow? A. I have never experienced that type of bagged cargo.

Q. Never experienced what? A. The carriage of the type of bagged cargo that you have in mind.

Q. I am talking about any bagged cargo. A. You asked me if I had ever carried any.

Q. No, I didn't ask you if you carried any. I asked you if you had experienced— A. No.

Q. —either as master or since you have been ashore? A. No.

Q. Well, you certainly are familiar with the fact that there are ample facilities of stowing any mass of cargo so that there may be ventilation afforded in the interior of that mass, aren't you? (1075a) A. Yes.

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(1079) • • •

Q. In one of your letters here—or what do you call these, memoranda—this one dated September 14, 1951, the last paper in this exhibit, Libelants' Exhibit 38, you speak of rope slings (handing). You remember that, don't you,

Captain? You read that this morning. A. Yes, I read it, but I am looking for "rope slings."

Q. Isn't that the one that refers to it? A. I don't think so.

Q. I may have gotten the wrong one. Isn't this it right here (indicating)? A. Manilla net.

Q. Manilla net. A. Not slings.

Q. Apparently I have used the wrong word. What is the distinction between them, rope slings that are used to discharge cargo, and what is the manilla net? A. It is a large net made of manilla rope.

Q. And the spaces between the pieces of it are how wide? A. The mesh between six and ten inches.

Q. It was a manilla net with mesh of that size that was provided by the Black Diamond vessels in connection with the stowage of naphthalene on deck? (1080) A. Yes.

Q. And that was provided according to your letter to hold the stow fast on deck; is that true? A. Yes.

Q. Is there any practical reason, Captain, that you can tell us, why that manilla net would not also hold the tarpaulin fast over the top of the stow of tarpaulin? A. No.

Q. You expressed the opinion, Captain, as I understood you, that it is not practical to protect this naphthalene carried on the deck of a Black Diamond vessel by awnings or dunnage. A. Yes.

Q. I didn't quite understand why you thought it was impractical. A. Well, it is impractical due to the trade, the North Atlantic, the type of weather encountered.

Q. You mean the force of the wind? A. I mean the wind and the sea.

(1081)

Q. A July passage is normally a very smooth passage, is it not? A. It is the best month of the year, possibly—June, July.

Q. And the after deck of a vessel is the deck that receives the least effect of wind and sea, isn't that so? A. No.

Q. Is it not so? A. No.

Q. You think you get more wind and sea aft than you do forward, Captain? A. It depends on the wind and sea, the direction you are going in.

Q. Well, I said "normally," and I am now referring to a voyage from Europe to the United States. A. Yes.

Q. Now, let us see what your answer "yes" is to. A. Well, on a voyage from Europe to the United States it would be the least exposed to head winds.

Q. That is, the after deck would be? A. Yes.

Q. And least exposed to seas, too, isn't that so? A. Yes.

Q. I understood you to say that in your opinion this cargo of napthalene should not be protected from (1082) the rays of the sun—or am I wrong in my statement? A. I didn't say that it should not be protected from the rays of the sun. I was speaking of the North Atlantic trade.

Q. Well, I am talking— A. The trade we are in.

Q. Yes, the North Atlantic trade from Europe to the United States carrying crude naphthalene on deck. A. The temperatures from the rays of the sun in the North Atlantic trade could not be expected to reach the proportions of which it would become dangerous or hazardous alone—the effects of the sun alone.

In other words, you do not have that kind of temperature.

Q. You know that even at a cool temperature crude naphthalene throws off a very heavy odor, do you not? A. Yes.

Q. That would be true on a winter voyage, isn't that so? A. No.

Q. You don't think there would be any odor in a winter voyage? A. Very little because it becomes frozen.

Q. Well, I didn't know that.

In any event, the warmer the weather the more (1083) the odor from this commodity, isn't that true? A. Yes.

Q. And you know the odor comes from gases escaping from the cargo, do you not? A. Yes.

Q. You told us that you knew of no serious fire in naphthalene prior to that of the "Black Gull." Is that a fair statement of your testimony? A. Yes.

Q. You did know of the fire on the "Norwalk Victory" at Rotterdam, did you not? A. Yes.

Q. What did you understand—or I had better ask you this: How did you learn of that fire? A. By cable dispatches from Europe.

Q. You received a cable from your Rotterdam agent advising you that fire had broken out in naphthalene on the deck of the "Norwalk Victory"? A. Yes.

Q. And did you afterwards get a report dealing with that fire? A. Yes.

Q. And you knew fire broke out in a sling load of naphthalene being stowed on that vessel? A. Yes.

Q. And you know that the fire from that slingload (1084) spread to the deck cargo of naphthalene on that vessel, did you not? A. Yes.

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(1085) • • •

Recross examination by Mr. Longley:

(1086)

Q. Captain, don't you know that the gases of this cargo are heavier than air so that they sink to the bottom rather than rise? A. I know that they are heavier than air and I also know that they will rise.

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(1087) • • •

Hubert Hollaar, previously sworn, called as a witness on behalf of the respondents, testified as follows:

Direct examination by Mr. Stonebridge:

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(1089) • • •

Q. Now, in your examination before trial taken by Mr. Zisgen in Rotterdam, you testified that during your employment with Black Diamond, eliminating the war years, there were approximately 800 to 1200 sailings of Black Diamond vessels from Rotterdam and Antwerp to the United States, and that somewheres between 45 and 60 per cent of those vessels carried crude naphthalene always on deck and always uncovered; is that correct? A. That is in summary correct, but I have in the meantime alerted by something that the master of the "Black Gull" has said here, detected that I had omitted to state that there were two instances where we covered a lot of naphthalene on deck of our vessels on the insistence of the shippers.

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(1102) • • •

Q. I believe you have already testified, Captain, that you are familiar and were in 1953 familiar with the Coast Guard regulations regarding the stowage of crude naphthalene. A. That is correct.

Q. How do the Coast Guard regulations classify crude naphthalene? A. As a hazardous cargo.

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(1113)

Cross examination by Mr. Longley:

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(1129) • • •

Q. Now these nets you told us were made of manilla, were they not? A. Yes.

Q. Of course they did not protect the naphthalene from the rays of the sun, did they? A. No.

Q. Nor did they protect the naphthalene from contact with any matches or burning cigars or burning cigarettes or sparks from the funnel, if any should have been blown aft on top of the cargo? A. No.

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(1130) • • •

Q. There are enough apertures or spaces between the bags in the stow so that the gases from this ventilation in your opinion can be pulled up to the surface by the action of wind blowing over the top? A. Yes.

Q. And that is true, in your opinion, even though these gases that come from this commodity are heavier than air? A. Yes.

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(1131) • • •

Q. And then you referred to the United States Coast Guard Regulations that you had, and you knew in 1952 the provisions of those Coast Guard regulations, so far as concerns the covering of naphthalene when stowed on deck in burlap bags—you knew that, did you not?

(1132) A. Yes.

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(1143) • • •

Q. Captain, we come down to this, I think; In 1952 when the "Black Gull" was stowed you knew it was hazardous cargo? A. Yes.

(1144)

Q. And you knew that under the Coast Guard regulations of the United States if carried on deck it must be under cover or protected by awnings or tarpaulins? A. I knew that the Coast Guard regulation read that way.

Q. You knew that the naphthalene on the "Black Gull" was not so covered? A. Yes.

Q. You knew it remained uncovered during the whole voyage from Antwerp and Rotterdam over to the Port of New York? A. Yes, I know that.

Q. You knew that you had booked and there were stowed on the "Black Gull" a very large cargo of valuable merchandise that had been stowed at Hamburg and Bremen, Antwerp and Rotterdam under deck? A. I did not book it but I knew we carried it.

Q. You knew it was a valuable cargo, worth something like $3 million, didn't you? A. That I had no idea.

Q. I won't pin you down, but you knew that it was a highly valuable cargo? A. Yes.

Q. You knew that the Black Diamond had entered into a contract to carry all of this cargo from these (1145) ports of loading to the United States ports? A. Yes.

Q. Those being New York, Philadelphia and Boston? A. Yes, sir.

Q. And you knew that naphthalene was inflammable? A. Yes.

Q. You knew that if a spark from the funnel or a burning cigarette or a burning cigar reached the naphthalene on the deck as you had it stowed there was great danger of fire? A. I don't think so, sir.

Q. You did not think it would ignite? A. No.

Q. You thought that there was no danger whatever of fire if a cigarette were thrown on top of the stow? A. Yes, that is my belief.

Q. And that belief was based on what, Captain? A. That belief was based on the fact that in the North Atlantic crossing it is to be expected that you will encounter rain, spray, sea, fog, various reasons whereby the jute bags would become moist, wet, I would even say, and that even a spark or a burning butt of a cigarette would not entail the danger to which you are referring.

(1146)

Q. Let us assume that did not occur but your bags of burlap are not wet by rain or seas. Under those circumstances didn't you know that there was great danger of fire if a cigarette or a match or a spark reached it? A. Even that is an impression I did not have.

Q. You mean an opinion you did not have?

The Court: Impression.

A. Impression.

Q. Impression, I beg your pardon. A. That I did not have.

Q. You thought then there was no danger of fire in it at all? A. I knew that the flashpoint of the naphthalene was put at 78 to 80 degrees centigrade and that this temperature would not be reached.

Q. By what? A. By a spark or cigarette. It would burn out, or die out, before that temperature would be reached, to such an extent that it would set the stow on fire.

Q. What do you understand is the temperature of a burning cigarette or a burning cigar? A. I am not a chemist, but I will try to answer your question. I will say that the burning cigarette will certainly have a temper-

ature higher than that, (1147) but there is not enough caloric heat I will say in this little object to set such a stow on fire.

Q. But you tell us you would expect gases— A. Yes.

Q. —to come up through the crevices in the stow; and you knew, did you not, that those gases were inflammable? A. At a certain temperature.

Q. You knew, did you not, that temperature would be reached by a cigarette or any other open flame such as a burning cigarette, burning cigar or match reaching the gas? A. I answered you yesterday that the purpose of not covering was to make sure that the gases would not be there, that they would be blown away.

Q. In any event, it was your opinion that there was no danger whatever to this deck cargo of naphthalene stowed as it was, from any outside flame that was liable to reach it during the course of the voyage; is that a fair statement of your opinion? A. Any normal outside flame. Of course, if somebody went with a torch——

Q. I think I said "normally to be expected." A. Yes, that is my opinion.

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(1150) • • •

Q. Now, you told us yesterday that there was no Dutch regulation dealing with the stowage of naphthalene. A. Yes.

Q. In 1952 or prior thereto you had never consulted with any Dutch lawyer about it, had you? A. No.

Q. You had never taken it up with the Dutch officials, requesting whether or not there were any regulations dealing with the stowage of naphthalene? (1151) A. That isn't quite right.

Q. Well, tell us what is right. A. We have to give a list of cargo to the harbormaster again in Rotterdam, and if there is anything—a list of dangerous cargoes and if

there is anything where the harbormaster has special rulings, then he will let us know.

Q. The harbormaster has jurisdiction in relation to the safety of the Port of Rotterdam? A. Yes.

Q. Isn't that the extent of his jurisdiction? A. That is what I understand it to be.

Q. In giving your list of commodities to the harbormaster, did you in this case, or other cases, put down "We are stowing so many tons of naphthalene on the deck of the 'Black Gull', or some other ship, and we are not covering the naphthalene, and how about it?" A. No, sir, of course not. We do not indicate the manner of stowage.

Q. Then you never did inquire of any Dutch official in 1952, or prior thereto, in relation to any regulation dealing with naphthalene? A. No.

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(1153)• • •

Q. You told us you made no inquiry about it in 1952. In 1954, you did, didn't you? A. Yes.

Q. And you did that for the purposes of this case, did you not? A. Yes.

Q. Because of the destruction of the "Black Gull"? A. Yes.

Q. Now, I have in my hand Petitioner's Exhibit W, which is a letter from the Shipping Inspector of the Second District addressed to Van Nievelt Goudriaan & Company, dated May 3, 1954.

You are familiar with that letter, are you not? A. No, sir, I am not familiar with the letter. (1154) I have heard of its existence but actually that letter was not addressed to me but to our agents.

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(1156) • • •

Q. You are the man who has complete authority so far as concerns the stowage of Black Diamond ships? A. Yes.

Q. And this letter that you have now read, you say you heard about— A. Yes.

Q. —a short time after it was received, after its date? A. Yes.

Q. And you knew that it dealt with the views of the Shipping Inspector of the Ministry of Shipping of Holland, in relation to the stowage of naphthalene? A. Yes.

Q. And yet you never read the letter? A. No.

Q. Well, why is that, Captain? (1157) A. Because I am still of the opinion that there was no such regulation in force, and now that I have read the letter I only find that my opinion is confirmed in the letter.

Q. Well, I don't quite understand what that has to do with why you didn't read the letter, Captain.

I asked you why you, knowing of this letter and knowing that you were in complete authority over the stowage of Black Diamond ships, that you never read the letter. Were you trying to avoid it? A. I was not. My opinion on the stowage of naphthalene I had from years of experience established, and I knew that there might be people having a different opinion but there was no rule or law or regulation which they could 'ay before me showing that I was breaking that.

Q. Well, are we to understand, then, that holding the position you did, and knowing that you were stowing naphthalene in Rotterdam on various vessels of Black Diamond, you had no interest in the views of the Dutch Government as to its proper stowage? A. This is not the Dutch Government, where this letter comes from.

Q. It is the Shipping Inspector of the Second (1158) District of the Dutch Government, is it not? A. Yes, and it is his personal opinion.

Q. His personal opinion as Shipping Inspector of the Second District? A. Yes.

Q. And in this letter—I am leaving that for the moment— you were told the contents of this letter, were you not? A. Yes.

Q. And you knew then, in this letter dated May 3, 1954, that this Shipping Inspector of the Second District for the Government of Holland, told you or whoever read the letter, that this cargo, that is, naphthalene, "will generate inflammable vapors if only slightly heated."

You learned that, did you not? A. Oh, I knew that before.

Q. Yes, and he expresses the opinion that that is the reason why this substance easily ignites. You knew that before, too, didn't you? A. Well, there is where I differ with him.

Q. You don't think it does easily ignite? A. No.

Q. You knew perhaps about this letter telling you that crude naphthalene contains a lot of creosote? (1159) A. I did, yes.

Q. And you know the bags are stained with the creosote from crude naphthalene? A. I have often seen it, yes.

Q. Indeed, the naphthalene stowed on Black Diamond ships before the voyage of the "Black Gull" was nearly always stained with creosote from the contents? A. It was.

Q. And that is true of the naphthalene stowed on the "Black Gull", is it not? A. As I recall; I have no reason to think it was different, but it is so long ago.

Q. In other words, it always is that way, isn't that what it amounts to? A. Practically, yes.

Q. I think you told us that in Rotterdam this commodity comes down the rivers in barges. A. Mostly, yes.

Q. Mostly. You said sometimes it comes in rail cars. A. Yes.

Q. And of course it is stowed in the barges a certain number of tiers high. A. Yes.

Q. And the weight of the cargo on top will squeeze the creosote in the burlap at the bottom; (1160) isn't that true? A. I believe that squeezing isn't even so necessary. The goods in itself are apt to stain the bags.

Q. In any event, you knew that the burlap of the bags was usually—and in the case of the "Black Gull", in fact, was impregnated with the creosote oil from the product. A. Yes.

Q. You knew that this Inspector said in his letter "These impurities"—referring to the impurities of crude naphthalene—"are liquids a.. l during prolonged transport may be absorbed by the fabric of the bags, making them more inflammable."

Didn't you know that? A. I know that he says that but in that respect I do not quite agree with this gentleman.

Q. You don't think that the burlap bag being impregnated with this oil becomes more inflammable? A. I am of the opinion that mineral oils—and that is what I have always learned—I am not pretending to be a chemist—that mineral oils in this respect are not dangerous, that it is more the vegetable oils which constitute the danger in that respect.

Q. You hold the view, then, that a rag impregnated (1161) with kerosene presents no danger? A. Yes, it does because the kerosene is a very volatile oil.

Q. Let it be lubricating oil. A. That contains a certain lubricating effect and I would also consider that as something on which I would have to guard against.

Q. But you don't think that creosote oil presents any danger? A. Not so great a danger, no. I have never seen any one of these bags just burst in flame for no cause, when they were stowed on the dock.

Q. No one is suggesting any spontaneous combustion, Captain. I said they became more inflammable.

Now, you disagree with what this Inspector says in that regard? A. Well, I disagree in this respect with him—I would not enter into the merits of the danger but that they became highly dangerous I disagree.

Q. He says, going on—quoting——

> "Naturally covering will diminish the risk of ignition from the outside."

You knew he said that in this letter, didn't you? A. Yes.

(1162)

Q. And then he adds at the end of the letter—near the end:

> "I incline to the view that ignition from outside is the greatest danger during carriage of naphthalene, so that in case of carriage on deck it is better to cover the cargo."

You knew that was in the letter? A. That's his privilege to hold that opinion. Mine was different.

Q. And then he enclosed a copy of this and I will now read the last paragraph of this letter:

> "I am enclosing a copy of the regulations concerning naphthalene included in the handbook 'Dangerous Cargoes', which is going to be published."

And then you learned that enclosed with this letter were these regulations, didn't you? A. Yes.

Q. And you knew, did you not, that these regulations particularly provide that naphthalene, if stowed on deck, must be protected from the sun's rays? A. I know they contain that, yes.

Q. And yet with all this you tell us that in the (1163) face of what your own Government has told you, you continue to stow naphthalene on deck unprotected? A. I beg to differ, an opinion—my Government hasn't told me that. This book has never been published not until today.

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Hubert Hollaar—for Respondents—By the Court

(1168) • • •

By the Court:

Q. Captain Hollaar, in your opinion would it have (1169) been dangerous to cover the stow with a tarpaulin on top? A. Your Honor, it would not have been exactly perhaps dangerous, but it would have been less advantageous. That is what I have been trying to explain. The gases I see as the danger, and if I can only get rid of the gases, as I said yesterday, no gas, no fire—ventilation.

Q. You feel that the effect of the wind in removing gases would not have been sufficient if while the top of the stow was covered the sides were left open? A. That is it, your Honor.

Q. Will you explain a little further how the gas would be dangerous if the stow were covered with tarpaulins? A. Your Honor, this gas is supposed to have a flash point of 70 to 80° C., this gas being heavier than air, would stay in any small pocket which would be in the stow, and if the gases could not be taken away then gradually of course the gas of the naphthalene being the heavier in comparison to air, it would replace whatever air spaces there are left in the stow, and consequently in that covered stow we would finally have naphthalene gas. It would take quite a while to take that gas out by diffusion, but in my opinion new formed gas would accumulate more rapidly if this existing quantity of gas is not helped by the (1170) maximum of ventilation to be carried off.

Q. Do you contemplate the possibility that the flash point of that gas will be reached simply by the heat of the sun in a covered stow? A. No, sir; I do not think it would be reached by the heat of the sun only, because seeing the temperatures, the prevailing temperatures across the North Atlantic Ocean, I could not say that we would reach that point. But that might, of course, be done from an outside source, providing that source carried enough caloric heat with it to cause it.

Hubert Hollaar—for Respondents—By the Court

Q. What outside source would you have in mind? A. Well, sir, there may be people who are perhaps not overcautious at a certain time during the voyage. They may be having an open flame some place, without of course being authorized to have that; but anyway, if they were working around the decks, I could imagine that such a thing would happen. The best of precautions on the part of the officers sometimes cannot overcome the stupidity of others. So if there are no gases, there could be no harm done.

Q. Do you think if somebody was using a blow torch there it would be more likely to ignite the stow if there were a tarpaulin over it than if it were open? A. Yes.

(1171)

Q. Would there really be any difference, if anybody had a flame as powerful as that? A. Well, sir, it is hard to say. That would depend upon the time he would be with that blow torch in the neighborhood of the stow.

Q. But if the outside source of ignition were a cigar stub or cigarette stub, or a spark from the funnel, it would be much less likely to ignite the stow if covered by a tarpaulin than if the flame were against the stow; isn't that true? A. Perhaps so, yes, your Honor.

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(1172) • • •

Q. Assuming that a tarpaulin was put under the manilla net, would that tarpaulin be any less secure than the tarpaulin that was put over the drums of vinol cyanide? A. No, your Honor, it would not, but at the same time we would not be doing what the Coast Guard requires from us.

Q. No, but let us leave that for a moment. In what way would that means of coverage differ from the way you covered the vinol cyanide with tarpaulin? A. Your Honor, as I have said, it is my firm belief that we should have

the maximum of ventilation, and also thereby surface ventilation of the stow. If we put a tarpaulin under a net, then of course we include the surface ventilation, although the tarpaulin itself would be held down by the net.

Q. I was not going into the question of ventilation, but simply the question of the feasibility of maintaining the cover during the voyage. What is the difference between the means you had for securing the tarpaulin over the drums of vinol cyanide and this method which was suggested of putting a tarpaulin under the manilla net? A. Under the manilla net I must say there would be chance for the tarpaulin to survive.

* * * *

(1174) * * *

Recross examination by Mr. Longley:

Q. Captain, are you seriously telling us as an experienced mariner that a tarpaulin is as readily ignitible as a burlap bag? A. If it was impregnated with naphthalene, I do not see any difference.

Q. A tarpaulin is made of a very heavy duck, is it not? A. All depending, sir.

Q. The tarpaulins that were used on your ships? A. Yes.

Q. There is such a heavy duck that you could not bend it very readily with your hand, isn't that so? A. No, sir.

Q. It is a very heavy material in any event, isn't it? A. It is heavy, yes, but so are the bur- (1175) lap bags used for naphthalene.

Q. And then you have impregnated your tarpaulins with a waterproofing material? A. There are tarpaulins not that way, impregnated, and they are both admissible on board ships.

Hubert Hollaar—for Respondents—Re-cross

Q. Don't let us fence with each other, Captain. The tarpaulins you used on your ships, on the Black Diamond ships, were impregnated with a material to make them watertight, weren't they? A. Yes.

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(1189) • • •

SVEND A. TANG, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Captain Tang, by whom are you employed? A. Isbrandtsen Steamship Company.

Q. In what capacity? A. As general superintendent in charge of terminal operations and line operations.

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(1190) • • •

Q. Do you know anything about the characteris- (1191) ties of crude naphthalene, Captain? A. Yes, it is a coal tar product, flash point about 125, melting point about 160, volatile and inflammable.

Q. Are you familiar with the United States Coast Guard regulations with respect to the stowage of crude naphthalene? A. Yes.

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(1194) • • •

Cross examination by Mr. Longley:

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(1195) • • •

Q. First, you know now and you have known during your time with Isbrandtsen, that naphthalene has the

characteristics set out in the Coast Guard regulations—and I show them to you (handing to witness).

Will you read them over, if you will? A. (After examining) Yes, yes.

Q. And it is described first as a strong coal tar odor—you know that is true? A. That is correct.

Q. That it is readily ignited by sparks—you know that is so, is it not? A. That is, the gases.

(1196)

Q. Well, whatever it is. A. Yes.

Q. Whether it be the gases that emanate from the stuff, you know is readily ignitible by sparks? A. Yes.

Q. "Gives off heavy dense smoke when burning and will add materially to a fire." You recognize that as so? A. Yes.

Q. "—will evolve inflammable vapors at or below its melting point." You recognize that is true, is it not? A. Correct, but how much below its melting point?

Q. I don't know. A. The flashpoint is 125.

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(1203) • • •

Naphthalene in itself will not ignite by putting a match to it or a cigarette butt or anything else like that, but gas pockets may, in my opinion, be (1204) ignited by sparks and static or otherwise and would create an additional fire hazard.

By not covering naphthalene we permit such gases to escape, by blowing away as it develops.

Q. Then you do recognize the danger that this is— A. Well——

Q. Wait a minute til I finish the question. —the danger that this might ignite from sparks, this commodity? A. With gas being present amongst the bags, yes.

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(1176) • • •

A. G. Hagens, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

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Q. By who: are you employed? A. At present by Thomsen Stevedoring, Rotterdam.

Q. Exactly what are they, and where do they operate? A. Do you want me to give you the whole picture?

Q. Very briefly. A. Thomsen Stevedoring is principally a stevedoring firm in Rotterdam, though having branches in Hamburg, Antwerp, Amsterdam, in South Africa in Capetown, Port Elizabeth——

Q. I think that is enough, Captain. Please keep your voice up a little bit. A. Louder, do you mean?

Q. Yes, please. Is there any relat onship between the Black Diamond Steamship Corporation and the Thomsen Stevedoring Company? A. Only that Thomsen is the stevedore for the Black Diamond.

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(1177) • • •

Q. In what capacity have you been serving with Thomsen? A. Well, I am chief inspector of stevedoring.

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(1179) • • •

Q. Did you make a particular inquiry into naphthalene and its characteristics and the existence or non-existence or regulations concerning its carriage? A. Yes, I did.

Q. Approximately when? A. I did—well, that is, of course, a bit hard to say, sir, after all these years—whether that was right at the time (1180) we started to carry the stuff or whether it was two or three months later, I cannot of course tell you but I can tell you this, that of course

we were in the possession of all works of reference that can be found in any large shipping office, and that covers completely the field.

Apart from that I had received, after the war, new books on the subject—for instance, the Coast Guard regulations which were, of course, of importance to the Holland-America Line going out to the United States principally—I had occasion to—well, I had better not say it like that, but the war, of course, interrupted our trade for a long time and when we started out again after the war it was more or less a hard job to get into our stride again, and of course I knew exactly how we had stowed the naphthalene before the war. I had carried it often enough myself to know that, but when I received the Coast Guard regulations and saw in the book—and if I am right it was the publication of 1941—that the Coast Guard required us to protect the naphthalene when stowed on deck, and looking up the specifications on what "protected" meant, finding out that the Coast Guard wanted us to erect (1181) structures—let us say, put structural erections over naphthalene or protect it from the direct rays of the sun by means of awnings, it struck me as rather strange that this was required now when we had been carrying naphthalene for so long to the United States on so many ships, and I didn't feel so very easy about that because I felt there might be something the matter which I did not know, and since this was going to be my responsibility and since I am not in the habit of taking my responsibilities lightly, I made it a point via our freight department to inquire at a coal tar factory in the neighborhood of Rotterdam—people whom we dealt with, whom we had done business with and whom we knew—what really were the properties of naphthalene, especially whether naphthalene might be more dangerous than I knew about, • • •

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(1184) • • •

Cross examination by Mr. Longley:

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(1209) • • •

Q. And you know Mr. Aeby's book recommended, the issue existed in 1952, that naphthalene be stowed under cover; isn't that true? A. I did.

Q. And you said you referred to the Coast Guard regulations? A. I did.

Q. And you know what they recommend? A. I do.

Q. And when after the war you saw the Coast Guard regulations you decided that something new had come into being, is that the idea, as to regulations? A. I noticed then with I got the copy of the United States Coast Guard book that there was a rule introduced then which was in contradiction to the practice which we had followed. I knew of course that before the Coast Guard rule originated there were rules by the Steamboat Inspection, but I was not sure what they were, and I had no copy of them.

Q. So you made the investigation you referred to, of going up to some factory and finding it was highly in-
(1210) flammable, this material? A. I beg your pardon, I could not state that because that was ruled out.

Q. What was ruled out? A. The fact that I went to a factory for that information, sir.

Q. It was not ruled out that you went to the factory. What was ruled out was something was told to you. A. Well, I am prepared to state that I went to a factory.

Q. And thereafter you were satisfied that on the ships that you stowed that were going to the United States you would stow naphthalene on deck uncovered? A. To what period are you referring yet?

Q. Up to date. A. Up to date; yes, sir.

Q. And you told us as I understood you that you

thought it should be uncovered because of an accumulation of gases— A. I did.

Q. That might occur, were uncovered. A. Yes, sir.

Q. What was going to ignite the gases? A. Open fire.

Q. What kind of open fire? A. I would not be in a position to tell you, sir.

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(1231) • • •

MERLE ALLEN, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Captain Allen, by whom are you employed? A. I am self-employed as a marine surveyor.

Q. How long have you been in that occupation? A. I have been as a marine surveyor since 1947.

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(1234) • • •

Q. Have you ever as a marine surveyor, surveyed shipments of crude naphthalene? A. Yes, I have carried out a considerable number of surveys on crude naphthalene.

Q. Approximately how many would you say? A. Roughly I would say between thirty and forty, perhaps forty-five.

Q. And where were those surveys conducted, on shore or on ship? A. The majority of them, I would say about ninety per cent of them, were carried on on board vessel while it was in stow.

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(1235) • • •

Q. Did you notice how the cargoes of crude naphthalene were stowed on those vessels? A. Yes, sir, I did.

Merle Allen—for Respondents—Direct

Q. Would you please describe it, how the cargo was stowed—how and where? A. I have found approximately four different arrangements of stow, and they are as follows:

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The Witness: Number 1: I found them to be stowed on the open deck with a dunnage flooring and to a (1236) height of approximately six to eight tiers high, with a cribbed arrangement around the sides, and with rope lacing over the top.

Number 2: I found them to be stowed without any cribbing on the sides and with rope nets and save-alls over the top and the sides of it.

Number 3: I found it to be stowed without any protection on the sides except some rope nets and over the top a scattered cross-plank dunnage.

Number 4: I found it to be stowed six to eight or possibly ten tiers high with a tarpaulin over the top and some dunnage separations on the side.

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(1248)

Cross examination by Mr. Longley:

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Q. Well, isn't it true that you have surveyed the cargo for the United States Lines? A. Yes, sir, that is so.

Q. And isn't it true that you surveyed naphthalene carried on United States Lines? A. Yes, sir, one of several.

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(1249) • • •

Q. Isn't it true that the United States Lines carries naphthalene on deck covered with tarpaulins? A. On occasions.

• • • •

Q. Well, in any event, you have been on board United States Lines ships in the Port of New York and found that the deck load of naphthalene was covered with tarpaulins, haven't you? A. Yes, sir.

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(1254) • • •

Q. Do you know what the flashpoint of a gas from naphthalene is? A. I know approximately, yes.

Q. What do you think it is? A. I think it ranges between 172 and 180.

Q. What do you think, then, could possibly ignite these gases that you refer to? A. Well, I should say that there are many things that could actually ignite them if the conditions were ripe.

I am not a chemist; I am not sure what explosive gases and what combinations would cause an explosion, but there are people working on deck, the vessel's cargo is all the time working.

Q. Yes. A. There is a possibility, I think, of people going over it, of friction, of spark.

Q. Friction of sparks? A. I said friction or sparks.

Q. "or sparks," I beg your pardon. Friction of what? (1255) A. Well, there are many times chafing of metal parts.

Q. Do you think that a spark perhaps coming from the friction of metal parts might set it off? A. I think there is a possibility. I am not that much of a chemist to know but I think——

Q. Do you think a spark from the funnel might set it off? A. From what I know about sparks from funnels, I don't believe it is quite hot enough, but then again I am not a chemist and I say again there is a possibility.

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Merle Allen—for Respondents—Cross

Q. Well, now, tell me on what lines that you have seen the stowage of naphthalene covered with tarpaulins? A. I don't believe that those—I represent various principals and various steamship companies in the Port of New York and although I can answer that question, I don't believe that I should.

(1256)

Q. You don't believe that you should tell us what lines you are talking about that carried their naphthalene covered with tarpaulins? A. I don't think that their names should be bandied around. It has no direct connection with their interest.

Q. Well, you have already told us that the United States Lines— A. No, you mentioned that.

Q. I told you and you agreed. A. You mentioned that and I agreed. I didn't mention any name at all.

Q. Well, you have known other lines, without naming them? A. Yes.

Q. Where you found that the naphthalene was covered with tarpaulins? A. Yes, sir.

Q. How many other lines have you found? A. Only one.

Q. Is that a United States flag line? A. Yes.

Q. So you have the United States Lines and this other United States flag line were carrying naphthalene improperly stowed, do you? (1257) A. In my opinion of proper stowage, yes, I consider it improper. There is certainly nothing in the regulations which refers to tarpaulins.

• • • •

(1263)

ALVIN C. PURDY, called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. Stonebridge:

Q. Dr. Purdy, by whom are you employed? A. I am employed by the firm of Bull & Roberts, Incorporated, consulting chemists.

Q. And in what capacity are you in their employ? A. As president.

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(1265)

Q. Doctor, did you at my request collect bags of crude naphthalene from a vessel called the "Black Falcon" in New York Harbor in January, 1956? A. Yes, as instructed, I boarded the "Black Falcon" at the Black Diamond piers at the foot of Court Street, I think, Brooklyn, and in company with their representative inspected the stow on deck and selected one bag in the second tier down from the top, on the starboard side, alongside the No. 4 hatch. With the assistance of the stevedores it was removed from the stow. That bag was of Belgian origin bearing the marks "C. N. S."

Then going a little farther aft, we selected a bag of French origin having the trade name "Chematar," and then we selected a third bag which on inspection bore the information "Made in West Germany." But the three or four initials of the trade name were indistinct, so we can refer to that perhaps as the West German product.

Those three bags were removed to the pier, put on a Bull & Roberts truck, and I came back on the truck to our laboratory. We removed about twenty pounds of naphthalene from each of the bags and disposed of the rest, because we could not very well handle six hundred pounds in the laboratory.

(1266)

We emptied the bags and took the bags up to the laboratory and carefully inspected them, and we detected that on the reverse side of the bags all of them were obviously or had been, sugar bags. They bore various marks. In each case part of the mark was "Product of Cuba," and the other mark was a central—do you want to have those?

Q. If you have them. A. Yes. The CNS bag bore the number 3382 on the naphthalene marked side. On the reverse side it was marked "Central."

The next word was illegible, and then, "Product of Cuba." The Chematar bag——

> Mr. Longley: I must confess, if your Honor pleases, that I am mystified by all this and how it is relevant to this case—how some bags were marked that came over here on a ship that arrived a few weeks ago or a few days ago. I think I will object to it because it just seems to me a waste of your Honor's time.
>
> The Court: I assume that it is going to have some bearing, so I will take it.
>
> Mr. Stonebridge: It will.

A. (Continuing) The Chematar bags were marked on the other side "General Sugar Central Vertientes (1267) Produce of Cuba," and bore a number, and the German bag was marked on the reverse side, "Central Moron Product of Cuba."

Q. Doctor, did you at our request conduct certain tests of these naphthalene bags which you received from the "Black Falcon"? A. Yes, we did. We determined the melting point of each of the samples. We determined the flash point of each of the samples. We conducted some tests relative to possible ignition under various conditions.

We ran three tests on the bagging material for spontaneous combustion, using both the standard Mackey procedure and the U. S. Coast Guard modification of the Mackey procedure. We also determined the amount of oil in the CNS product which visually, being dark brown, was assumed to be the most crude of the three. That was also indicated by a somewhat lower melting point.

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(1270) • • •

Q. It is a fact, is it not, that naphthalene will emanate gases or vapors even at a temperature below its flash point? A. Yes.

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(1277) • • •

Q. Have you carried out experiments with the bags you selected from the "Black Falcon" in order to determine whether or not a burning cigarette placed on a burlap bag would cause a fire? A. Yes, we carried out a series of experiments. Actually we had encountered an article which appeared in the quarterly of the National Fire Protection Association in January. Listening to Dr. Snell's testimony, I know he referred to the same article. In that article it had some official background apparently, because it was written by the State Fire Marshal and the chemist of the office of the California State Fire Marshal, and they carried out a series of experiments first determining the temperature of a burning cigarette, the center of the cigarette and the outside of the cigarette, and when an artificial draft was drawn through the cigarette to simulate one being smoked; and they arrived at various maximum temperatures which you would get in a cigarette under those conditions. They then carried out a series of experiments in which they described how they took swatches (1277a) of fabrics and held them in slight tension, and then laid cigarettes on top to see if the fab-

ric would ignite, and thinking that that was an interesting technique and applicable to our problem, we did exactly the same thing with pieces of bagging cut from the Chematar bags and from the CNS bag. We did it both with stained pieces of burlap and with unstained pieces of burlap.

(1278)

Q. All of the pieces, however, came from—— A. Oh, yes, they were from the bags and I brought those pieces up, if the Court——

Q. Would you please show them to us and describe them? A. A piece cut from the CNS bag, a stained section, a cigarette was placed on that after we lit it, took a couple of puffs and put it on the bag—I have the time of ignition.

(After examining) The bag first started to glow as a visible flame after about one-third of the cigarette had burned. The glowing continued for an additional 17 minutes and the fabric was destroyed beyond the outline of the cigarette. This is that—that was pretty well attacked beyond that (indicating).

Now, a similar unstained sample from the same bag glowed for about 13 minutes after half the cigarette had been consumed. In other words, the oil from the naphthalene did make the bagging more inflammable and it ignited—it took 13 minutes and half the cigarette burned and it continued to glow and it destroyed the fabric beyond the outline of the cigarette—which is this one (indicating).

The Court: It ignited in 13 minutes and
(1279) glowed for 13 more?
The Witness: Yes.

A. (Continuing) Now, we had a third sample cut from a stained section of the bag, and this was placed so that its

lower surface was in intimate contact with naphthalene from the same bag.

In other words, on the procedure described in the article, both sides of the fabric were exposed to air.

In this case this was a highly stained section of the bag and the cigarette was placed on it and the cigarette burned completely but the bagging at no time glowed and there was only slight charring in the area of the cigarette.

In other words, the presence of naphthalene under the burlap greatly retarded—in fact at no time did this piece glow; it merely charred.

Q. That third sample, as I understand your explanation, was placed firmly on top of a pile of naphthalene? A. That is right. It wasn't pressed down; merely the pile of naphthalene was flattened and this was laid right on it.

Q. And the lit cigarette was placed directly there? (1280) A. That's right—and the same procedure was used in the case of the Chematar bagging and that was stained with naphthalene and there there was more—we did get a slight glow at the end of 23 minutes, and the charring extended beyond—that one was pretty well charred.

The Court: It glowed after 23 minutes?

The Witness: Yes.

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(1282) • • •

Q. Now, is pure naphthalene susceptible of self-heating? A. From a chemical standpoint I wouldn't feel that it was and I did search the literature for some 25 years and found no reference to spontaneous heating of pure naphthalene.

Q. How about crude naphthalene? (1283) A. With crude naphthalene, because of the nature of the impuri-

ties, I don't think that you can be quite as certain of naphthalene as derived from a distillation of coal tar in which relatively high heat is applied. You may get some unstable side reactions. There is a possibility that you might have impurities in crude naphthalene which would be subject to self-heating.

Q. Have you carried out experiments with the burlap bagging which you received from the "Black Falcon" in order to determine whether or not it is susceptible to self-heating? A. Yes, we carried out three experiments. We ran two experiments on the CNS bagging. Now, there is and has been for many years a standard procedure for testing for spontaneous combustion known as the Mackey test. The Mackey test apparatus is quite simple. What it involves is a cylindrical chamber, air chamber surrounded by a water chamber.

Into the air chamber there are two tubes—vents. One goes to the bottom of this air chamber; the other taps off at the top—the purpose being to provide a little air circulation in this interior chamber.

(1284)

Then in the center of the chamber there is a cylindrical wire basket in which the material to be tested is to be placed. In the classic Mackey procedure, you put the material to be tested in this chamber after you had gotten the water up to the boiling point in the outside chamber. Then there was a thermometer inserted into the center of the material being tested in the wire cylinder and if the temperature rose above 100 centigrade in one hour, or above 200 centigrade in two hours, I think it was—that was the original criterion in the Mackey procedure of possible danger from spontaneous heating—in other words, your material was never subjected to a temperature higher than the temperature of the water, 212 or 100 centigrade, and actually your temperature in the air chamber with

the circulation usually runs about 5 degrees centigrade below that, unless there is evidence of self-heating.

Now, more recently the Coast Guard developed a test procedure which is a modification of the Mackey. It uses the same apparatus but they have a procedure specifically applied to fabrics, in which they cut a piece of fabric—it is two or two and a half inches wide, roll it up and put it in (1285) the center chamber, after your water bath has come to 100 centrigrade, and then they follow the temperature for four hours.

Now, if in that period of heating the temperature of the material being tested has a temperature rise of over 5 degrees centigrade, they then assume the possibility of spontaneous combustion and would question whether material so tested could be used as ships' stores.

Q. Doctor, when you say a rise of over 5 degrees you mean a rise to over 105 degrees centigrade? A. That is right. In other words, to get back to centigrade again, your water bath would be 100, and if you got a temperature of over 105 in your material being tested, they would then very much question whether that material could safely be used as ships' stores; so with pieces cut from CNS bagging—that was the most highly stained and contained the least pure of the crude naphthalenes—we ran two tests, one by the Mackey procedure and one by the modification of the Coast Guard procedure.

In both cases we did get heating. We got a temperature, a maximum temperature of about 103½. Now, that is below—we got 103 and in the straight (1286) Mackey we got 101.5.

Now, those two definitely showed some self-heating. The fact that they did show some self heating leads us to believe that the possibility of spontaneous combustion cannot be eliminated in the case of the carriage of crude naphthalene in secondhand bags which at some time had obviously contained sugar and might have contained

other commodities between the carriage of sugar and the carriage of naphthalene.

We did also test a sample cut from the Chematar bagging and in that case we got no evidence of heating at all.

In other words, there was no evidence of self-heating in the Chemitar bagging but in two tests run under two different procedures, we did get evidence of some self-heating in the CNS bagging.

Q. If the self-heating was due to impurities, how would that process develop during the course of an ocean voyage in a stow of bags? A. Well, it would tend to develop towards the center of the stow. In other words, there is a certain optimum ventilation conditions, you might say, for spontaneous combustion—you have to have (1287) enough oxygen to permit your heating, which is an oxidation of the action to take place, but you don't want so much ventilation that it removes the heat as formed.

All types of spontaneous combustion are clear at some point, not necessarily in the center but sub-surface, whether it is a stack of hay or a pile of coal.

Q. Would it, in your opinion, be possible during such a process to obtain a temperature at which naphthalene could be ignited without any outside source of heat? A. Well, our experiments on the small sample merely showed some heating tendency. Now, whether under optimum conditions of insulation and of slight ventilation that process could have been carried to the point of ignition, we can't say.

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(1288) * * *

Q. Doctor, aboard the M/V "Black Gull" in July 1952, on the port side of the after deck, we had bags of naphthalene stowed approximately 6 feet high from a point beginning just inboard of the bulwarks to a point about 3 feet from the hatch coaming—in effect, an area of some

13 to 16 or possibly 17 feet in width, and extending approximately 100 feet fore and aft.

In your opinion is it possible that a fire could have occurred from self-heating in the bagging of that stow? A. I think it's a possibility. I think that's as far as we can go.

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(1289) • • •

Q. If you were told by a witness that the first indication of a fire in a stow of bags of naphthalene was a dull bump, with a flame following, would that suggest to you that the cause of the fire might have been self-heating? A. I don't think that that would follow necessarily—it would probably be more the location of the origin of the fire.

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(1293) • • •

Cross examination by Mr. Longley:

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(1294) • • •

Q. And the bags that you had before you with which you experimented were bags that you found had been used apparently at some time for the carriage of sugar? A. Because of the markings we assumed that to be true.

Q. That is an assumption because of the markings? A. Yes, sir.

Q. And of course you naturally have no way of telling—I guess you said that—what other cargoes these bags may have carried? A. Yes, that is true.

Q. Of course the bags could be made more or less susceptible to ignition, according to what may have impregnated them; isn't that a fair statement? A. That is true. I would call attention to the fact that washed sugar bags do have a bad reputation for spontaneous ignition.

There is quite a bit of discussion on washed (1295) sugar bags and their hazards in a symposium on spontaneous combustion——

Q. Will you tell us why that is so? A. Why that is so?

Q. Yes. A. No, I can't. Sugar itself is not considered to be—to have a spontaneous combustion hazard. There have been arguments pro and con as to some fires which occurred in the storage of raw sugar, and in the absence of other sources of ignition there have been several that were claimed to be spontaneous combustion but never proved to be.

Q. Then we start in, as I understand you, with the known fact that used sugar bags present a recognized danger of spontaneous ignition. Is that a fair statement? A. Yes, used sugar bags per se.

Q. And in your experiment that you conducted you necessarily were using used sugar bags? A. That's right.

Q. Leaving out used sugar bags, Doctor, have you ever known from your own experience of any spontaneous heating or ignition of burlap bags? A. I have never had any experience that would point that out.

(1296)

Q. And have you ever conducted any experiments of the type that you have explained here which you employed in connection with these used sugar bags to ascertain whether there was any possibility of spontaneous ignition, of burlap bags that had not been used for the carriage of sugar? A. No.

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(1297)

Q. Do you not agree that your profession recognizes that there is no danger of spontaneous combustion of bags made of jute? A. I would qualify that to the necessity of stipulating the minimum temperature to which the jute is subjected.

Now, as I understand it, the Bureau of Standards has proven that jute does self-heat if you have an initial temperature of—I think it is around 400.

Spontaneous combustion always has to presuppose what the ambient temperature at what you start is.

Q. Well, I don't think I have made my point quite clear, Doctor.

There is a difference between raw jute and a product made out of jute, is there not? A. Yes, I would say that there would be.

Q. The difference is that a jute bag is made of the fibers of jute woven in two directions and creating cells—thousands of them in a bag—isn't that true? A. Yes.

Q. And isn't it true and well recognized in your profession that when you have a bag made of jute (1298) the way I have described, that any possible danger of spontaneous heating of jute, of itself, is not presented in the bag because of the way the heat would be dissipated, because of the weaving of the jute?

Isn't that a recognized statement? A. I don't know of any spontaneous heating that could be attributed to jute bags but I think that in any question of spontaneous heating you are always dealing with the surrounding circumstances of heat, of ventilation, of other commodities which may inter-act with it.

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(1299) * * *

Q. And you yourself have never known of a case of spontaneous combustion of jute bagging, have you? A. No, I have not.

(1300)

Q Have you ever heard of a fire in burlap bagging which was thought to have resulted from spontaneous ignition? A. This is new burlap bagging?

Q. That is right. A. Not in new burlap bagging, no.

Q. What? A. Not in new, unused burlap bagging.

Q. You have heard of fire which is thought to have resulted from spontaneous combustion of used burlap bagging, have you? A. Yes.

Q. And that resulted from the commodity with which the burlap bagging had become impregnated? A. In the case to which I refer they stated definitely they were used sugar bags.

Q. Well, that was your experiment—is that what you are referring to? A. No, I am referring to statements in a symposium on spontaneous combustion.

Q. I see. A. In which they cited the hazards of used sugar bags.

The Court: Didn't you say first "washed sugar bags"?

(1301)

The Witness: Yes, they are washed.

The Court: Is there any possibility that any foreign agent comes in in the washing?

The Witness: I wouldn't feel so, no, your Honor.

Q. You think it probably is some residue of the sugar that causes this danger but a little bit unknown what the residue is. Is that a fair statement? A. I think that is a very fair statement.

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(1302) • • •

Q. But in any event, I gather what you told us that the Coast Guard assumes that there is no substantial danger of self-heating if the increase in temperature is under 5 per cent. A. They have set that as an arbitrary limit for ships' stores.

Q. Do you disagree with the Coast Guard? A. Not at all on the matter of the ships' stores, (1303) if that has been their——

Q. Well, what is the distinction between spontaneous combustion in ship's stores or in any product? A. Mr. Longley, here we are dealing with what is really an unknown mixture. We have used bags. We have crude naphthalene. We have a certain type of stow and we have got some self-heating.

Now, the mere rise of 3 degrees indicates that some reaction took place.

Now, if any reaction takes place, any increase in temperature above the water bath temperature takes place, there is an indication of danger which might develop under certain conditions of stow, of ventilation, and so forth, so that I feel that our experiment prevents us from ruling out the possibility—I wouldn't say it was a probability, but I don't think that we can rule out the possibility of self-heating under this combination of circumstances that we have, as indicated by this bag and this naphthalene.

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Q. Haven't you got to assume, then, that the naphthalene carried on the "Black Gull" was c rried in used sugar bags? A. Well, perhaps the assumption is not too far fetched, when we are dealing here with three lots—one coming from Belgium, one from France and one from (1306) West Germany, and all three lots—at least the bags which we took, the single bags from each of the three lots were all sugar bags.

Q. And I think you told us, but I had difficulty hearing you from where I was sitting at the time—when was it that you took these bags? A. That was on January 24th, in the afternoon.

Q. This year— A. Yes.

Q. —1956. And that is all you know about the bags? A. That is right.

Q. You took bags, I think you told us, from a stow, did you not, on a ship? A. Yes.

Q. And I think you explained how you took them. A. Yes, I explained the exact points on that.

Q. And the antecedents of the bags, you are ignorant of that? A. Absolutely.

Q. Except as you saw the markings it appeared to be used sugar bags? A. It is only based on the markings of the two sides of the sugar bags.

Q. A burlap bag, a normal piece of burlap bagging, has a fuzz on it, does it not? (1307) A. Yes.

Q. Don't you recognize, Doctor, that that fuzz in itself is highly ignitable? A. Yes, I think there the best thing is to refer to the actual experiments which we carried out in the samples which we have shown you and shown the Court, and there is no question but that what they did ignite. They didn't flame up; they glowed, and the glow continued—I see your samples are very similar to mine.

Q. I did not know that I had a sample. A. Well, I thought Dr. Snell having read the same article and done the same experiment.

Q. Well, you told us, as I understood it, that you took these pieces of burlap—well, let's see—these were from the bags, were they not? A. Oh, yes.

Q. Used sugar bags. A. Yes.

Q. And stretched over something, isn't that it? A. No, they are stretched—we followed the exact procedure used in this article where they were testing inflammability of fabrics and the actual apparatus is pictured there, and we did the same thing.

Q. Well, I say you stretched it. A. That is right. There is a slight tension due (1308) to the rubber band so that the cigarette would lie flat.

Q. And how big a material was it that you used? A. It was the standard size, which is—I think they give the size here—it is 2½ by 5 offhand, if I remember that.

Q. You mean inches? A. Yes.

Q. And then you put a piece of the burning cigarette in the center of the piece of burlap, stretched as you have mentioned? A. That is right.

Q. And that is true in each case? A. That's right.

Q. It is true, is it not, Doctor, that the burlap is most ignitable where there are corners or edges or knots or ears of the bag? Isn't that so? A. I don't think that is necessarily so. We felt that under the most severe conditions would be to have the bag stretched so that the cigarette was as nearly as possible in contact throughout its whole length so that it heated, that is, every bit of its burning length was in contact with the bag. I would feel that that was a more severe test than if it was lying on a crease or something like that, where part of the cigarette was up in the air and not (1309) flat on the burlap surface.

Q. But what I am visualizing, doctor, you have the ear of the bag—you know, of course, what I mean by the "ear"? A. Yes, yes.

Q. In the ear of the bag or the seam of the bag, there you have rough pieces of material, don't you? A. yes.

Q. Don't you agree, Doctor, that if a cigarette is lying against the seam of a bag or against the ear of a bag, where the burlap, in the course of the manufacture of the bag has become roughened up, that you have much greater fire than where you have it in the middle of a smooth piece of burlap? A. That is assuming that the end of the fire tip comes in contact with that face. Actually you have a pretty fuzzy surface right on the surface of of the bag, and this procedure that we used—and really, the reason we used it was—you might say that perhaps it got away from any subjective treatment of ours.

(1310) We were using a more or less official test procedure for testing the flammability of certain fabrics, so we proceeded along those lines exactly and felt that we were perhaps less open to criticism for not being objective if we followed standard procedure.

Q. Well, I don't think you have answered my question. A. Well, I—that is supposititious. It might and it might not. I mean it is entirely dependent on ventilation conditions and draft going across it or something.

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(1314) • • •

Q. Then we start in that the naphthalene itself is not susceptible to spontaneous ignition. A. The naphthalene itself.

Q. Now I again say to you, or ask you is a better way of putting it, with the naphthalene bag or bags in a pile, each bag being filled with naphthalene, will you explain to us how the bags could possibly heat spontaneously to the ignition point without the accumulated heat being dissipated in the naphthalene contained in the bags? A. Well, the naphthalene would probably first tend to melt and go into the bags. In the actual Mackey test we have a roll of burlap which is not more than—oh, not much more than about an inch in diameter—so we have not got a very big mass of the burlap there, and we did get some heating.

Q. But you had nothing inside your roller burlap to take away the heat, did you? A. Not more than the small amount of adhering naphthalene that was in the burlap.

Q. I am not going to try to pose as a chemist or an expert in your line, Doctor, but at least as a layman it would appear to me that what I say is neces- (1315) sarily true, and I ask you to explain to me which way I am in error if I suggest to you that you could not possibly have your burlap bag filled with naphthalene, when it is filled

with naphthalene—I mean spontaneously heat to a point where it would ignite? A. Well,——

Q. Because of my suggestion that any heating of the bag is bound to be dissipated in the naphthalene itself? A. Undoubtedly some heat would be carried off, but you have your mass of stow there, and as I have said all we can really talk about is that a piece of burlap taken from one of the bags did show heating.

Now whether or not there was any possibility of that developing spontaneous combustion, we are dealing with a lot of other factors, the stow, the naphthalene and so forth, so I tried to limit the spontaneous combustion, and I did, to a possibility. Because of the heating of the burlap would seem to be some possibility, and I cannot help be influenced by the answers to certain questions relative to where the fire was observed and the dull thud.

Q. Did you conduct any experiment with a burlap bag or several burlap bags filled with naphthalene, (1316) as to the susceptibility of the burlap to spontaneous combustion? A. That of course is quite impossible, and that is one of the most difficult parts of studying any spontaneous combustion problem, that it is wrapped up so much with the size. It has been proved, for instance that wall board imported from Scandinavia will selfheat if you have a big enough mass, but you cannot prove it in the laboratory because you cannot study a big enough mass.

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(1317) * * *

A. I assume that as a possibility. In other words, if spontaneous combustion is involved it would have to develop in the center—I won't say center, but well within the stow. You could not have spontaneous combustion on the top.

Q. Because the air would take away the accumulating heat? A. That is right.

Q. It has to be in the center where the surrounding cargo so insulates it that the heat cannot be carried away; is that a fair statement? A. Yes. I tried to explain you have to have the ultimate conditions, providing enough oxygen for the occurrence but not enough air to cool the process.

Q. What is the melting point of naphthalene, Doctor? A. It is about 172.

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(1319) • • •

Q. That is what perplexes me, Doctor. I have heard the term used here, "autogenous." A. Yes.

Q. That is what? It is auto ignition? A. Yes, that means you do not have a fire, a spark, or something like that.

(1320)

Q. You mean the heat of the air or something around. Now what is the autogenous temperature of naphthalene? A. It is of the order I think of 1038. As I have explained, that is determined in a specific type of apparatus.

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(1322) • • •

Q. I had thought that you could not get this material to ignite unless you had an open flame presented, if the material was giving off gas; at its flash point; isn't that true? A. If you are dealing now out in the air, that is true.

Q. But you think a different situation is presented inside of the stow? A. Very definitely, if the stow has been subjected to this lower temperature over a long period of time, that is the only way that you could possibly have spontaneous combustion of practically any commodity.

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Q. But it is your serious opinion, Doctor, that this commodity inside of this stow could ignite autogenously, that is spontaneously, at a point at or before the melting point? A. Well, at or before the melting point, I have said that you can have sufficient vapor to cause a flash.

Q. Yes, I realize that. A. I would feel that you would undoubtedly have to go somewhat higher than that. But if you exposed this mixture of material for a prolonged period of time at a temperature somewhat elevated above that, and how much I could not possibly say——

Q. You are now speaking of somewhat elevated above melting point? A. Yes. In that particular area, of course. You would not melt the whole stow, you might possibly melt an area in the center.

Q. Suppose you get to the point where the commodity is beyond melting point, it is bound to melt, isn't it? A. It would melt right adjacent to the (1324) surface heat, but that would not spontaneously melt everything beyond that.

Q. Wouldn't just the section that had started melting —wouldn't the melted material necessarily cause a lowering of the temperature of this material which you are assuming was spontaneously heating? A. Locally if it started to sublime you would undoubtedly have some temperature effect to the latent heated supplements.

Q. You will bear with me in my ignorance, Doctor, I am sure, but as I view it in my ignorance, you could not possibly have a heat beyond the melting point without the cargo in contact with that heat melting. Isn't that a fair statement, that it would? A. Yes, locally. Locally you would.

Q. Then if it locally heats, or melts, I mean, the more heat that you have the more melting you are going to have around that area, aren't you? A. That is perfectly

true, in so far as you have good heat conductivity through the naphthalene.

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(1327) • • •

Q. Is it a fair assumption that this darker material is less refined than the other two? A. I think that is a fair assumption, yes.

Q. Does that mean there is more creosote in it? A. Yes.

Q. Does that mean it is more dangerous? A. Yes.

Q. So far as concerns heat? A. Yes, I would say so.

Q. Is it a fair statement, then, that the more creosote there is in the material the more dangerous it is? A. I think that is a fair statement. You recall in our Mackey test we got heating with that sample and did not get heating from the bag sample from the French.

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(1330) • • •

Q. Let us deal with this commodity. A. Yes.

Q. This is a pile of naphthalene in burlap bags. A. That is right.

Q. First, at all temperatures it gives off a certain amount of gas, does it not? A. Yes, depending on its vapor pressure at that temperature.

Q. And the higher the temperature to which it is subjected the more the gases thrown off? A. That is right.

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(1332) • • •

Q. Let us come down to this, Doctor: if you have this commodity in bags, if you apply heat at the top of the stow long enough, you will be able first to bring the commodity to flash point and, second, ignite it; isn't that true? A. If the temperature and the heat energy of the ignition source is sufficient, yes.

Q. There would not be anything autogenous about that? A. No.

Q. And if it starts a fire in the way I have mentioned, you would expect a very hot fire indeed, would you not? A. Yes.

Q. You would expect it to spread throughout this cargo and present the danger that a ship, if it was on a ship, would be consumed? A. No question about it.

Q. In other words, once the fire starts — A. That is right.

Q. The danger of a disaster is pretty terrible, isn't it? A. I think that is a very safe statement, yes.

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(1333) • • •

Q. If I held the match to the wick, then I have a flame that eventually will consume the candle? A. That is right.

Q. Don't you have exactly the same thing, Doctor, if you have burlap bags over a commodity such as naphthalene? A. Once ignition has taken place, you do, but I showed you this morning what happens when you have a piece of burlap and place it on naphthalene and put a cigarette on top of the burlap.

Q. Doctor, would you have any sense of impending danger if you were on a ship and you saw somebody throw a burning cigarette on top of a pile of naphthalene? A. I would certainly be worried about it, yes.

Q. Why? A. Because under certain conditions you might expect that it would burn.

Q. What conditions? A. If you had sufficient draft you might have it. What impressed me——

Q. Go on from there. A. It is just one of these (1334) dangers you would naturally fear. Just like the sparks flying into gasoline and not igniting, and actually it did not do it when we experimented with it.

Q. Yes, but you agree that if you were on a ship, you and your family, if you will, and saw somebody throw a lighted cigarette on top of a stow of naphthalene, you

would feel worried, wouldn't you? A. I would feel worried to have a cigarette fall on anything that is combustible.

Q. Let us deal with naphthalene. Why would you feel worried? A. The bag is combustible and the naphthalene is combustible.

Q. You might feel worried that you would lose your life, perhaps, Doctor? A. I will include the bags of naphthalene, but actually it was experimentally shown that the naphthalene seems too chilly.

Q. Why would you feel worried under the circumstances? You tell me that you conducted an experiment and there was not any fire; I ask if you would be worried, and you say yes, for fear there might be a fire. I confess I do not understand the two answers. A. I think that is a perfectly normal reaction. If you saw a cigarette fall on any sort of combustible (1335) material you would be worried.

Q. Then you know that burlap bags will cause it? A. Certainly.

Q. You would fear that was danger of fire if a lighted cigarette was thrown on the burlap bags? A. I would think there was a possibility of it.

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(1337) • • •

Q. In your opinion would that increment due to the sun's temperature be a fair comparison of what you would expect as increment or difference between the shade outside the pilothouse temperature and the temperature of the deck of the steamship in the sun? A. Yes, I think with the temperature in that range in the 80s, you would expect the maximum sun temperature on deck to be about 43 degrees higher.

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(1341) • • •

By Mr. Longley:

Q. Doctor, the gases of naphthalene are heavier than air, are they not? A. Yes.

• • • •

(1346) • • •

Q. You told us this was a very ignitable cargo once it starts. A. That is a very indefinite term.

Q. It makes a quick fire. A. It is very combustible.

Q. How can you explain, doctor, if you can explain, there was a fire coming out of this third tier of bags in this stow, yet there was no fire from there to the top of the stow? A. I gathered there was evidence of flame coming up through the top.

Q. No, that is not the evidence at all. The (1347) evidence from witnesses is that they saw flame coming out between the second and third tiers on the side, but there was no fire in the bags above that flame on the side of the stow and I ask you, Doctor, if that is not an impossibility? A. No, I don't think so. If the fire started inside of the stow it would spread out between those tiers and up along the same tiers.

Q. What is going to stop it from burning the ends of the bags up to the top, then? A. I presume that it did.

Q. Do you not agree that a steel deck subjected to the temperature of the sun builds up a temperature higher than the temperature of the sun to which it is subjected? A. I don't think it would build up a temperature higher than what is called the black bulb temperature, which is the maximum sun temperature.

Q. I am thinking of experiences that I think we all have had, of a hot summer day and a metal surface getting so hot it burns your hand. That is true, isn't it? A.

Certainly, if it was 40 degrees higher than the shade temperature it would feel pretty hot.

(1348)

Q. If it got to a high temperature like that, and these bags were subjected to that temperature—I think you assume some 116 degrees, do you not? A. Yes.

Q. You would expect those bags of naphthalene to give off a much greater gas than at a lower temperature? A. Naturally, if the vapor pressure is higher at that point, but it still is well below the flash point.

Q. But it is headed toward the flash point; isn't that the situation? A. It is a point on a curve.

Q. So it is much more liable to be brought to the flash point, because it is already toward it; isn't that a fair statement? A. Well, I think it is perfectly fair to say that any initial heating would make it easier to ignite. Any initial heating.

* * * *

(1353) * * *

JOSEPH MAZZOTTA, called as a witness by the libelants in rebuttal, having been first duly sworn, testified as follows:

Direct examination by Mr. Zisgen:

Q. What is your occupation, Commander Mazzotta? A. Commander of the United States Coast Guard

Q. How long have you been in the Coast Guard? A. Thirty years in August—in October, this next October.

Q. Twenty-nine years and something, is that right? A. That is right, 29 years and 4 months.

Q. In July 1952 where were you stationed? A. I was commanding officer of Port Security Unit, Pier 9.

Q. That is Pier 9— A. East River, New York.

Q. New York City? A. That is right.

Q. At that time how long had you held that position? A. Since November 20, 1950.

Q. Now, what did your duties include in that position at that time, speaking very generally? A. My duties generally were to see that the (1354) captain of the port duties—the policies were carried out—the Port Security laws, dangerous cargoes and explosives law were carried out with the forces available.

Q. When you say "dangerous cargoes," what do you refer to? A. I refer to the gray book, what is known as the gray book, CCG-187. It is 46 U. S. Code.

Q. I show you a pamphlet entitled "Explosives and Other Dangerous Articles on Board Vessels." (Handing to witness) Is that the document that you referred to? A. That is correct.

Q. And when you said CCG-187, you referred to this number on the book? A. That is right, commonly known as the gray book in the service—we call that the gray book.

Q. At that time, in July 1952, or prior to that, while you were in command of the Port Security Unit, was it or was it not the practice of the Coast Guard at New York to examine the stowage of either American or foreign vessels arriving at New York Harbor to see if the regulations in this pamphlet were being observed? (1355) A. Will you repeat the first part of the question?

Q. Will you read it, please, Mr. Reporter?

(Question read)

A. It was impossible to examine every vessel. We did examine certain types of vessels. The three categories that were examined were vessels that were carrying military cargo, military assistance cargo and explosives, and vessels tied up to piers which were restricted under the volunteer restricted program at the time.

Q. And with those exceptions, do I understand that it was not a routine practice to examine such stowage? A. It was impossible to examine every vessel as a routine practice.

Q. Why was it impossible, Commander? A. Due to lack of personnel and it was also mandatory that each master, owner and operator comply with the laws. Merely the presence of the Coast Guard aboard did not exempt them from complying with the present laws.

Q. You say that you were at that time commander of the Port Security Unit? A. That is correct.

Q. Under the oast Guard organization in New York (1356) at that time, were there other units also? A. Prior to September 3rd, I believe, of 1951, no, Pier 9 was the only one enforcing—my unit was the only one enforcing the Port Security laws.

Q. Well, were there or were there not other sections or divisions or departments of the Coast Guard doing other types of work? A. Yes, sir—we have a section called the Marine Inspection Personnel. They go aboard vessels to inspect machinery, the hull and life-saving equipment.

Q. Under the Coast Guard organization, as at the time that you were in command of Port Security Unit, did the Port Security Unit rely on the Marine Inspection Unit to enforce the regulations in this pamphlet which I have shown you? A. The Marine Inspection Personnel are not trained in Port Security and the only way they would know that there was a violation, if they knew there was a violation they would report it or somebody would have to call it to their attention. Merely walking on board a ship, they would not know that there was a violation of the Port Security laws.

Q. Well, did you, as commander of the Port Security Unit, look to them to enforce these regulations? (1357) A. No, sir.

Joseph Mazzotta—for Libelants—Rebuttal—Direct

Q. Now, in July 1952 and prior to that time, while you were in command of the Port Security Unit, was there any ruling of any kind which in any way modified the provisions of this pamphlet containing the regulations concerning explosives or other dangerous articles relating to the stowage of naphthalene? A. Not at that time—not that I can recall. There were changes from time to time, amendments made, as the Coast Guard and the Safety Bureau and the underwriters gained experience, they work in conjunction and they write up those laws.

The Coast Guard merely enforces the laws.

Q. But as at the time that you were in command of the Port Security Unit, do you know of any modifications concerning the stowage of naphthalene? A. No, sir, not from that date to this is there any, so far as I know.

Q. During the time when you were in command of the Port Security Unit, did it ever come to your attention that any vessel arriving in New York Harbor had naphthalene stowed on board in violation of these regulations? A. No, sir.

(1358) • • •

Cross examination by Mr. Stonebridge:

• • • •

(1359) • • •

Q. Have you had any practical experience in the stowage of cargoes? (1360) A. Yes, sir. As I previously mentioned, on those ships I served on as cargo officer, I was trained by officers of the U. S. Lines.

Q. I would like to get one further point clear: You indicated that the Coast Guard personnel could go aboard vessels in the Harbor to inspect the hull, the engines, the life-saving equipment—they are not trained specifically in stowage, is that correct? A. No, I said Port Security laws. I did not say "stowage."

Q. In Port Security. A. That is right.

Q. What exactly does Port Security embrace, while we are on that subject? A. Well, it embraces the stowage of explosives and other dangerous cargo as outlined in the gray book—ammunition, water-side facilities, docks and piers, to meet certain requirements, minimum requirements. The gray book are the minimum requirements that are laid down by law.

* * * *

(1367) * * *

CHESTER SNELL, previously sworn, called as a rebuttal witness, testified as follows:

Direct examination by Mr. Longley:

* * * *

(1369) * * *

Q. It has been suggested here by Dr. Purdy if this material in burlap bags was in a stow some 90 or 100 feet long and some 6 feet high and some 13 feet wide, that it is conceivable that the interior of one of the bags—I had better say an interior bag in the stow might become so heated that it would burst into flames spontaneously.

Will you let us have your views about that and explain your views? A. Well, Dr. Purdy testified that in his opinion the autogenous ignition temperature in such a case might be less than that published, but it would be higher than the melting point of naphthalene certainly, so assuming that they were self-heating when the naphthalene reached its melting point, it would melt, requiring a large amount of latent heat (1370) and fusion, which would stop the increase in temperature immediately because until the naphthalene had melted it wouldn't get higher than its metling point, and having melted, by gravity it certainly would flow downward to other bags,

which in turn must melt so that the cargo must collapse upon itself before it reached the temperature that it could possibly ignite, due to the fact that we would have a liquid center which had considerably less volume than the solid from which it came.

Q. Doctor, there is testimony here by one of the witnesses suggesting that a tarpaulin is highly ignitable.

Will you express your views, Doctor, as to the comparable ignitability of a tarpaulin and of a burlap bag containing naphthalene? A. I carried out an experiment similar to the one described by Dr. Purdy, using a tarpaulin, and merely got a scorch spot on the top surface when a cigarette was completely burned in contact with it, whereas, as Dr. Purdy has testified, a burlap bag will catch fire or glow and the cigarette will burn through here.

Q. I do not think Dr. Purdy said that the bag caught (1371) fire in his experiment. He said it glowed.

Now, Doctor, you expressed the view, when I interrogated you before, that if you had a stow of naphthalene of the type I have mentioned, without any cover over it, that if a lighted—that is, a burning cigarette or cigar stub or a burning match were thrown on top of the stow, in your opinion there would be a great danger of fire.

Have you any reason to change that opinion? A. I have not.

Q. What do you visualize now when you give that testimony? A. Well, I realize that experimentally it is very difficult, and I didn't carry out experiments like Dr. Purdy because—well, for one thing, he carried out his experiments in still air whereas we have a ship moving at 16 knots, and stirring up its own breeze so that there would be a wind to blow the ash off and make the tip of the cigarette hotter than it would be in still air, and as any cigarette smoker knows, occasionally you get a flare where there is a spot of nitrate that is not equally distributed, which gives you momentarily a much hotter temperature, so

that there are so many of (1372) these imponderables, that experimentally you might try 99 or 100 times without setting it afire, whereas the hundredth time you might.

Q. The opinion has been expressed here, Doctor, that the fact that the first sign or notice of a fire to the officer on the bridge was a sound which he described as a bump or a dump or something of the kind, and immediately afterwards he found flame on the top of the stow.

What is your opinion as to whether or not the sound, which he described as I have mentioned, is necessarily only a sign of spontaneous ignition of this commodity inside the stow? A. Oh, I think there are other explanations. The fire started with melting naphthalene which would flow into the interstices and might very well cause a minor explosion.

Q. Then am I right when your naphthalene, if a fire started on top of the stow, when the bags and the naphthalene burns, you will find melting almost immediately? A. Yes.

Q. And you would expect the melted naphthalene to flow below, is that what you mean? (1373) A. That is right.

Q. If there are any cracks or crevices between the bags where it can flow below? A. That is right.

Q. You spoke the other day, I think, that a burlap bag in which this naphthalene was carried would act as a wick—that is the term I think you employed.

Would you sort of tell us all about what you had in mind in giving that testimony? A. Well, once the fire started the temperature would be high enough to melt the naphthalene and it would act—the burlap would act just like the wick of a candle to hold the flame. A stow of naphthalene, without the bags, would be much more difficult to ignite and probably not burn quite as fiercely.

* * * *

Chester A. Snell—for Libelants—Rebuttal—Cross

(1374) • • •

Cross examination by Mr. Stonebridge:

Q. Doctor, isn't it true that the word "tarpaulin" is one of rather general or generic scope? A. Well, it refers back to the original method of waterproofing by using tar. Of course, that has not been used for generations, I suppose.

Q. What is used today on various types of tarpaulin? A. Well, the most common thing that is used now is chlorinated paraffin. It serves the purpose of both waterproofing and flameproofing.

• • • •

Libelants' Exhibit 6

Bill of lading covering naphthalene from Rotterdam.

(OFFSETS)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 395a (2 sheets)
is on card 15.

Libelants' Exhibit 7

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition of

SKIBS A/S JOLUND

as owner of the M. S. "Black Gull", in a cause of exoneration from and limitation of liability.

A 178–380

MARIA ANGELINA VERBEECK, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORPORATION,

Respondent.

IT IS HEREBY STIPULATED AND AGREED, by and among the proctors for petitioner, the proctors for respondent and the proctors for libellants and claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck as follows:

1. If Ole Torleif Roed of Oslo, Norway were called to testify as a witness on behalf of claimants and libellants he would testify:

(a) That he is a member of the Bar of the Kingdom of Norway, entitled to practice in all of the Courts of that Kingdom.

(b) That under the law of the Kingdom of Norway, Belgian seamen employed on Norwegian ships

are not entitled to the benefits of the Norwegian Workmen's Compensation Statutes nor are their widows, children or other dependents entitled to any benefits thereunder when such seamen are killed in the course of their employment, excepting that such seamen employed on such ships are entitled in case of injury to certain hospital treatment and in case of death to certain costs of burial.

(c) That there is no treaty between the Kingdom of Norway and the Kingdom of Belgium extending the benefits of the Norwegian Workmen's Compensation Statutes to Belgian seamen on Norwegian ships or to their widows, children or dependents.

(d) That under the law of the Kingdom of Norway there exists a right of action in the widow, children and other dependents of a Belgian seaman employed on a Norwegian ship for the death on the high seas of such a seaman negligently caused against the person or persons whose negligence has brought about said death.

(e) That the measure of damages in such an action is the pecuniary loss sustained by those in whom the right of action exists.

(f) That said right of action is created by the Statute, the pertinent portions of which are annexed to the libel herein.

Dated: Oslo, Norway, August 15, 1955.

PYNE LYNCH & SMITH
Proctors for Petitioner

DOW & SYMMERS
Proctors for Respondent

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Libellants and Claimants,
Maria Angelina Verbeeck, et al.

ROTTERDAM

BLACK DIAMOND LINES

B/L No. 5

Libelants' Exhibit 6

D 3/748

BLACK DIAMOND STEAMSHIP CORPORATION

39 Broadway - New York 6, N. Y.

ROTTERDAM:	Van Nievelt, Goudriaan & Co., 2 Veerhaven.
AMSTERDAM:	Van Nievelt, Goudriaan & Co., 10a Spui.
NEW YORK:	39 Broadway.
CHICAGO, Ill.:	Messrs. Norton, Lilly & Co., 208 South La Salle Street.
DETROIT, Mich.:	Mr. J. A. Byrnes, 5—252 General Motors Building.
PHILADELPHIA, Pa.:	Messrs. Norton, Lilly & Co., 240 Bourse Building.
PITTSBURGH, Penn.:	Messrs. Lamark Shipping Agency, Henry W. Oliver Building.
PORTLAND, Maine:	Messrs. Peabody & Lane Inc., 57 Exchange Street.
BOSTON, Mass.:	Messrs. Peabody & Lane Inc., 110 State Street.
BALTIMORE, Md.:	Messrs. Norton, Lilly & Co., Court Square Building.
NORFOLK, Va.:	Messrs. Norton, Lilly & Co., Boyster Building.
MONTREAL, Can.:	Messrs. Saguenay Terminals Ltd., 1700 Sun Life Building.

Telegraphic Addresses:
Nigoco Rotterdam.
Nigoco Amsterdam.
Bladiac New York.
Vernotch Chicago.
Bladiac Detroit Mich.
Vernotch Philadelphia Pa.
Lamarkship, Pittsburgh Penn.
Pealane Portland Me.
Pealane Boston Mass.
Vernotch Baltimore Md.
Vernotch Norfolk Va.
Sagterms Montreal Canada.

BILL OF LADING

Received by BLACK DIAMOND STEAMSHIP CORP. hereinafter called the Carrier, from the Shipper hereinafter named, the goods of packages said to contain goods hereinafter mentioned, in apparent good order and condition, unless otherwise indicated in this bill of lading, to be transported subject to all the terms of this bill of lading with liberty to proceed via any port or ports within the scope of the voyage described herein, to the port of discharge or so near thereunto as the ship can always safely get and leave, always afloat at all stages and conditions of water and weather, and there to be delivered or transhipped on payment of the charges thereon. If the goods in whole or in part are shut out from the ship named herein for any cause, the carrier shall have liberty to forward them under the terms of this bill of lading on the next available ship of this line, or, at carrier's option, of any other line.

It is agreed that the custody and carriage of the goods are subject to the following terms which shall govern the relations, whatsoever they may be, between the shipper, consignee, and the Carrier, master and ship in every contingency, wheresoever and whensoever occurring, and also in the event of deviation, or of unseaworthiness of the ship at the time of loading or inception of the voyage or subsequently, and none of the terms of this bill of lading shall be deemed to have been waived by the carrier unless by express waiver in writing signed by a duly authorized agent of the Carrier:

SHIP: S/S "BLACK GULL" PORT OF LOADING: ROTTERDAM

SHIPPER: PHS. VAN OMMEREN (ROTTERDAM) N.V. as agents only

CONSIGNEE: ORDER OF "ORDER BOSTON" or assigns

Notify (If consigned to Shipper's Order) T.D. Downing Co., 88, Broad Street, Boston 10, Mass.
(without liability to carrier, see clause 12 hereof)

PORT OF DISCHARGE FROM SHIP: BOSTON. DESTINATION OF GOODS:
(subject to clause 11 hereof)

SCOPE OF THE VOYAGE: The carrier's general trade is between ports on or adjacent to the East Coast of North America in any order and ports of Holland, Belgium and Germany in any order.

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Shipper's Marks & Numbers	Number of Packages	Description	Gross weight in kilos	Measurement
M C C BOSTON Made in West-Germany 3334 - 6666	3.333	LOADED ON DECK AT THE RISK OF THE OWNERS OF THE GOODS. bags hot pressed Crude Naphtaline In transit from abroad	304.970	

Freight paid

ORIGINAL

We herewith certify that the within mentioned goods have been actually shipped on board
BLACK GULL
p. proc. Van Nievelt, Goudriaan & Co

The goods specified in this Bill of Lading are to be forwarded by steamship's agents to .....
at merchant's risk and ..... expense,
by .....
(Subject to the terms of the transhipment clause contained herein.)

FREIGHT TO BE PREPAID [redacted]

Gross Weight Said To Be Kilos	Measurement Said To Be C B M	Rate	Dollars	

Clause 27:
This contract is subject to Chamber of Shipping War Risk Clauses Nos. 1, 2 and 3 of August, 1937, which are deemed to be incorporated herein with the same force and effect as if fully set forth herein.

IN WITNESS WHEREOF, the master or agent of the said vessel has signed [redacted] Bills of Lading, all of this tenor and date, and if one is accomplished, the

BLACK DIAMOND LINE

BILL OF LADING

(CONTINUED FROM OVERLEAF)

Attention of shippers, passengers, consignees, forwarders, brokers and others is called to the provisions of Sec. 16 of the Shipping Act, 1916, as amended by the Act approved June 16, 1936, in relation to penalty of not more than $ 5000 for rebating, false billing, false classification, false weighing, false report of weights or any other unjust or unfair device or means to obtain or attempt to obtain transportation by water at less than the rates or charges which would otherwise be applicable.

1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

2. In this bill of lading the word "ship" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the carrier; the word "carrier" shall include the ship, her owner, operator, demise charterer, time charterer, master and any substituted carrier, whether the owner, operator, charterer or master shall be acting as carrier or bailee; the word "shipper" shall include the persons named as such in this bill of lading and the person for whose account the goods are shipped; the word "consignee" shall include the holder of the bill of lading, properly endorsed, and the receiver and the owner of the goods; the word "charges" shall include freight and all expenses and money obligations incurred and payable by the goods, shipper, consignee or any of them.

3. The scope of voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the ship may sail beyond the port of discharge or in a direction contrary thereto or depart from the direct or customary route. The ship may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The ship may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may, either with or without the goods on board, and before or after proceeding toward the port of discharge, adjust compasses, drydock, go on ways or to repair yards, shift berths, take fuel or stores, remain in port, sail without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage.

4. In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or the master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to any of her passengers, or to make it unsafe, imprudent, inadvisable or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods, or disembark passengers at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at, disembarking at or leaving the port of discharge or the usual or agreed or intended place of discharge or debarkation in such port, the carrier or the master may before, during or after loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon failure to do so may discharge and warehouse or otherwise store the goods, or any part thereof, at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual or intended place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo, or any part thereof, on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods, or any part thereof, at any place whatsoever as herein provided, including the port of shipment; or the carrier or the master may discharge and forward the goods, or any part thereof, by any means, rail, water, land, or air, or by two or all of such means, or by any route, whether operated by the carrier or others, at the risk and expense of the goods. The carrier or the master is not required to give notice of discharging or disposition of the goods or the forwarding thereof. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense, such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as hereinabove provided, the carrier shall be entitled to extra compensation; and if in following the procedure permitted herein the length or duration of the voyage of the ship is increased the shipper and consignee shall pay proportionate additional freight, all of which shall be a lien on the goods.

If the carrier takes any steps with respect to the goods or their disposition after the discharge of the goods as herein provided, the carrier shall be considered as acting solely for and as agent of the shipper and consignee.

5. The carrier, master and ship shall have liberty to comply with any orders, directions, requirements or suggestions, direct or indirect, as to allocation, loading, space, stowage, departure, arrival, sailing, navigating, courses, routes, ports of call, anchorages, stoppage, discharge, embarkation, debarkation, destination, delivery, disposition or movement of ship, cargo or passengers or otherwise however given, whether at port of loading or elsewhere, by the government of any nation or department thereof or any person acting or purporting or seeming to act with the authority of such government or any department thereof, or any committee or person having, or purporting or seeming to have, under the terms of the war risk insurance on the ship, the right to give such orders, directions, requirements or suggestions. Delivery or other disposition of the goods in accordance with such orders, directions, requirements or suggestions shall be a fulfilment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein, the carrier shall have the right to withhold delivery of the goods, reship to or deposit or discharge the goods at any place whatsoever, postpone the carriage of any or all of the goods, cancel in whole or in part the engagement for carriage of the goods or any part thereof, whether or not loaded upon the ship, require the owner, shipper or consignee to take delivery alongside the ship or surrender or dispose of the goods in accordance with any order, direction, requirement, suggestion or condition or agreement imposed upon or effected from the carrier by any government or department thereof or any person acting or purporting or seeming to act with the authority of either of them.

In any of the above circumstances the contract of carriage shall be deemed fulfilled, the carrier shall not be under any further responsibility in respect of the goods, and the goods shall be solely at their own risk and expense, and all expenses and charges so incurred shall be payable and paid by the shipper, owner or consignee thereof and shall be a lien on the goods.

6. Unless otherwise stated herein, the description of the goods and the particulars of the packages mentioned herein are those furnished in writing by the shipper and the carrier shall not be concluded as to the correctness of leading marks, number, quantity, weight, gauge, measurement, contents, nature, quality or value. Single pieces or packages exceeding 4480 lbs. in weight shall be liable to pay extra charges in accordance with tariff rates in effect at time of shipment for loading, handling, transhipping or discharging and the weight of each such piece or package shall be declared in writing by the shipper on shipment and clearly and durably marked on the outside of the piece or package. The shipper and the goods shall also be liable for, and shall indemnify the carrier in respect of any injury, loss or damage arising from shipper's failure to declare and mark the weight of any such piece or package or from the incorrect weight of any such piece or package having been declared or marked thereon.

7. Goods may be stowed in poop, forecastle, deck house, shelter deck, passenger space, or any other covered space commonly used in the trade for the carriage of goods, and when so stowed shall be deemed for all purposes to be stowed under deck. In respect of goods carried on deck and stated herein to be so carried, all risks of loss or damage by perils inherent in such carriage shall be borne by the consignee but in all other respects the custody and carriage of such goods shall be governed by the terms of this bill of lading and the provisions stated in said Carriage of Goods by Sea Act notwithstanding Sec. 1 (C) thereof. Specially heated or specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

8. Live animals, birds and fish are received and carried at shipper's risk of accident or mortality, and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any matters mentioned in Section 4, Sub-section 2, a. to p. inclusive of said Carriage of Goods by Sea Act or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived by the shipper. Except as provided above such shipments shall be deemed goods, and shall be subject to all terms and provisions in this bill of lading relating to goods.

9. If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provision shall also apply where the owners, operators or those in charge of any ships or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

10. General average shall be adjusted, stated and settled according to York-Antwerp Rules 1924 at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these rules according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currencies shall be converted at the rate prevailing on the last date of discharge of the goods at the port of destination. Average agreements or bonds and such cash deposits as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

11. Whenever the carrier or master may deem it advisable or in any case where the goods are consigned to a point where the ship does not expect to discharge, the carrier or master may, without notice, forward the whole or any part of the goods before or after loading at the original port of shipment, or any other place or places even though outside the scope of the voyage or the route to or beyond the port of discharge or the destination of the goods, by any vessel, vessels or other means of transportation by water or by land or by both such means, whether operated by the carrier or by others and whether departing or arriving, or scheduled to depart or arrive before or after the ship expected to be used for the transportation of the goods. This carrier, in making arrangements for any transhipping or forwarding vessel or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper and without any other responsibility whatsoever. The carriage by any transhipping or forwarding carrier and all transhipment or forwarding shall be subject to all the terms whatsoever of the regular form of bill of lading, freight note, contract or other shipping document used at the time by such carrier, whether issued for the goods or not, and even though such terms may be less favorable to the shipper or consignee than the terms of this bill of lading and may contain more stringent requirements as to notice of claim or commencement of suit and may exempt the on-carrier from liability for negligence. The shipper expressly authorizes the carrier to arrange with any such transhipping or forwarding carrier that the lowest valuation of the goods or limitation of liability contained in the bill of lading or shipping document of such carrier shall apply even though lower than the valuation or limitation herein. Pending or during transhipment the goods may be stored ashore or afloat at their risk and expense and the carrier shall not be liable or detention.

12. The port authorities are hereby authorised to grant a general order for discharging immediately upon arrival of the ship and the carrier without giving notice either of arrival or discharge, may discharge the goods directly they come to hand, at or onto any wharf, craft or place that the carrier may select, and continuously Sundays and holidays included, at all such hours by day or by night as the carrier may determine no matter what the state of the weather or custom of the port may be. The carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are upon the wharf, craft or other loading or discharging place. All lighterage and use of craft in discharging shall be at the risk and expense of the goods. Landing and delivery charges and pier dues shall be at the expense of the goods unless included in the freight herein payable for, if the goods are not taken away by the consignee by the expiration of the next working day after the goods are at his disposal, the goods may, at carrier's option and subject to carrier's lien, be sent to store or warehouse, or be permitted to lie where landed, but always at the expense and risk of the goods. The responsibility of the carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of Customs or other authorities. The carrier shall not be required to give any notification of disposition of the goods.

13. The carrier shall not be liable for failure to deliver in accordance with leading marks unless such marks shall have been clearly and durably stamped or marked by the shipper before shipment upon the goods or packages, in letters and numbers not less than two inches high, together with name of the port of discharge. Goods that cannot be identified as to marks or numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for completing delivery to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage. When grain is stowed without separation from other grain shipped either by the same shipper or by other shippers, any loss or damage to the combined shipments shall be divided in proportion among the several shipments.

14. The goods shall be liable for all expense of mending, cooperage, baling or reconditioning of the goods or packages and gathering of loose cargo or contents of packages; also for any payment, expense, fine, dues, duty, tax, impost, loss, damage or detention sustained or incurred by or levied upon the carrier or the ship in connection with the goods, howsoever caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient marking, numbering or addressing of packages or description of the contents, failure of the shipper to procure Consular, Board of Health or other certificates to accompany the goods or to comply with laws or regulations of any kind imposed with respect to the goods by the authorities at any port or place or any act or omission of the shipper or consignee.

15. Freight shall be payable on actual gross intake weight or measurement or, at carrier's option, on actual gross discharged weight or measurement. Freight may be calculated on the basis of the particulars of the goods furnished by the shipper herein but the carrier may at any time open the packages and examine, weigh, measure and value the goods. In case shipper's particulars are found to be erroneous and additional freight is payable, the goods shall be liable for any expense incurred for examining, weighing, measuring and valuing the goods. Such freight shall be paid on damaged or unsound goods. Such freight hereunder to port of discharge named herein shall be considered completely earned on receipt of the goods by the carrier, whether the freight be stated or intended to be prepaid or to be collected at destination; and the carrier shall be entitled to all freight and charges due hereunder, whether actually paid or not, and to receive and retain them under all circumstances whatsoever ship and/or cargo lost or not lost. If there shall be a forced interruption or abandonment of the voyage at the port of shipment or elsewhere any forwarding of the goods or any part thereof shall be at the risk and expense of the goods. All unpaid charges shall be paid in full and without any offset, counterclaim or deduction in the currency of the country of the port of shipment, or, at carrier's option, in the currency of the port of discharge at the demand rate of New York exchange as quoted on the day of the ship's entry at the Custom House of her port of discharge. The carrier shall have a lien on the goods, which shall survive delivery, for all charges due hereunder and may enforce this lien by public or private sale and without notice. The shipper and consignee shall be jointly and severally liable to the carrier for the payment of all charges and for the performance of the obligation of each of them hereunder.

16. Neither the carrier nor any corporation owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect.

17. In case of any loss or damage to or in connection with goods exceeding in actual value $ 500, lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $ 500, per package or per unit, on which basis the freight is adjusted and the carrier's liability, if any, shall be determined on the basis of a value of $ 500, per package or per customary freight unit, unless the nature of the goods and a valuation higher than $ 500, shall have been declared in writing by the shipper upon delivery to the carrier and inserted in this bill of lading and extra freight paid if required and in such case if the actual value of the goods per package or per customary freight unit shall be found to exceed such declared value the declared value shall nevertheless be deemed to be the declared value and the carrier's liability, if any, shall not exceed the declared value.

Whenever the value of the goods is less than $ 500. per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if paid, irrespective of whether any other value is greater or less.

Valuation of goods not shipped in packages but susceptible of being so shipped shall not be greater under this paragraph than would be the case had they been shipped in packages.

18. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the document of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.

19. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped or printed, are accepted and agreed by the shipper to be binding as fully as if signed by him. Any local customs or privileges to the contrary are abrogated. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exoneration from, or limitation of, liability. If required by the carrier, each signed bill of lading

(page 47 to)

EXPLOSIVES OR OTHER DANGEROUS ARTICLES

146.04-5 List of explosives and other dangerous articles and combustible liquids—Con.

Article	Classed as	Label req.	Page No.
Methanol (see: "Alcohol, wood"	Inf. L	Red	127
Methyl acetate	Inf. L	Red	153
Methyl acetone	Inf. L	Red	153
Methyl alcohol (see: "Alcohol, wood")	Inf. L	Red	127
Methyl amyl acetate	Comb. L		317
Methyl amyl ketone	Comb. L		317
Methyl bromide, liquid	Pois. B	Poison	287
Methyl chloride	Inf. G	Red	252
Methyldichlorarsine	Pois. A	Poison gas	261
Methyl formate	Inf. L	Red	153
Mesityl oxide	Comb. L		317
*Mineral spirits. (See: "Compounds, lacquer, paint or varnish reducing, liquid.")			
Mines, explosive. (See: "Explosive mines.")			
Mixed acid	Cor. L	White	236
Monobromobenzene. (See: "Bromobenzene.")			
Monochloracetone, stabilized	Pois. C	Tear gas	297
Monochlorbenzene (*Chlorbenzene*) (*Chlorbenzol*)	Comb. L		317
Monochloroacetone	Pois. A	Poison gas	261
Monochlorodifluoromethane	Noninf. G	Green	252
Monochlorotetrafluoroethane	Noninf. G	Green	252
Monomethylamine	Inf. G	Red	253
*Mortar stain, liquid. (See: "Paint, liquid")	Inf. L	Red	153
Moth Balls. (See: "Naphthalene.")			
Motion-picture film (cellulose acetate base)	No restrictions		193
Motion-picture film, (*nitrocellulose base, positive or negative*).	Inf. S	Yellow	192
Motion-picture film, old and wornout (cellulose acetate base).	No restrictions		193
Motion-picture film, old and wornout (*nitrocellulose base*).	Inf. S	Yellow	193
Motion-picture film, scrap (*cellulose acetate base*)	No restrictions		193
Motion-picture-film scrap (*nitrocellulose base*). (See: "Pyroxylin plastic scrap.")			
Motion-picture film, toy	Inf. S		194
Motion-picture film, toy, standard width	Inf. S	Yellow	194
Motion-picture film, unexposed (*nitrocellulose base*)	Inf. S	Yellow	192
Motor fuel (export shipments only.) (See: "Gasoline.")			
Motor-fuel antiknock compound	Pois. B	Poison	287
*Motor fuel, N. O. S	Comb. L		318
*Motor fuel, N. O. S	Inf. L	Red	154
Motor spirit (export shipments only.) (See: "Gasoline.")			
Muriatic acid. (See: "Hydrochloric acid.")			
Mustard gas	Pois. A	Poison gas	262
Nafta (export shipments only). (See: "Gasoline.")			
Naphtha, coal tar. (See: "Coal tar naphtha.")			
Naphtha distillate. (See: "Petroleum distillate.")			
Naphthalene	Has		343
Naphthalin	Has		343
*Naphtha, petroleum. (See: "Benzine.")			
Naphtha solvent. (See: "Coal tar naphtha.")			
Natural gasoline (casinghead gasoline)	Inf. L	Red	155
Negative cotton. (See: "High explosives.")			
Neon gas	Noninf. G	Green	253

146.27-100 Table K.—Classification: Hazardous articles—Continued

Descriptive name of article	Characteristic properties, precautions required, markings required	Label required	Required conditions for transportation			
			Cargo vessel	Passenger vessel	Ferry vessel, passenger or vehicle	R. R. car ferry, passenger or vehicle
Lime, unslaked. Quicklime.	*Unslaked Lime (Quicklime) is shipped in the form of white, hard lumps or pebbles or crushed or pulverized. It is obtained by burning limestone, dolomite or oyster shells.* *Unslacked lime combines with water to form calcium hydroxide or hydrated lime. This reaction develops heat, which in the absence of enough water and under confined conditions may be sufficient to cause ignition in contact with combustible substances.* *Unslaked lime absorbs moisture from the air when exposed.* Stow away from foodstuffs, organic materials, acids and explosives. Keep dry. Outside containers shall be marked either "Lime, Unslaked" or "Quicklime" or "Hazardous Article."	No label required	Stowage:* "On deck under cover." "Tween decks readily accessible." "Under deck." Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Siftproof railroad freight cars.	Stowage:* "On deck under cover." "Tween decks readily accessible." Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt.	Ferry stowage (AA). Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Vehicles with lime in nonspecification bags may be transported provided the loading shows no sign of sifting of the lime.	Ferry stowage (BB). Outside containers: Steel barrels or drums. Siftproof wooden barrels or kegs. Siftproof wooden boxes. Moistureproofed multiwall paper bags (MIN-W10) not over 100 lbs. net wt. Moistureproofed paper-lined burlap bags (MIN-W11) not over 100 lbs. net wt. Siftproof railroad freight cars.

It is not required that the above barrels, drums, kegs or boxes be ICC or CFC specification containers, although these specification containers are acceptable, but the officer in charge of loading the vessel shall satisfy himself they are sufficient in all respects for the purpose intended. He shall refuse any containers showing damage, leakage or an inability to properly contain the substance.

*Stowage of unslaked lime: All Unslaked Lime shall be stowed in cool, dry, ventilated compartments in position to permit jettisoning in an emergency and in conformity with the following conditions:
(a) Stowage shall be completely protected from water or other liquids, including spray, rain, exhaust steam or drainage.
(b) Lime in moistureproofed multiwall paper bags or moistureproofed paper-lined burlap bags shall not be stowed resting on deck.
(c) Dry wood dunnaging shall be provided in way of decks, bulkheads, ship's side and frames to prevent drainage, sweat or other moisture contacting the bags. Dunnaging on deck shall be so laid as to provide drainage channels to scuppers, sumps or drain wells.
(d) Lime may be stowed on skips, skids or portable trucks.
(e) Lime in paper or burlap bags stowed without benefit of skips, skids or other trucks shall not be stowed more than ten tiers high and no stowage shall be solid between two bulkheads nor from shell to shell.

Manganese dioxide.....	*In the form of crystals, lumps or powder. General oxidizing agent.* *Insoluble in water.* Do not stow with corrosive liquids (white label). Outside containers shall be marked either "Manganese Dioxide" or "Hazardous Article."	No label required.	Stowage: "On deck in open." "On deck under cover." "Tween decks." "Under deck." Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Stowage: "On deck in open." "On deck under cover." "Tween decks readily accessible." Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Ferry stowage (AA). Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.	Ferry stowage (BB). Outside containers: Steel barrels or drums. Wooden barrels or kegs, WIC. Wooden boxes, WIC. Fiberboard boxes, WIC.
Napthalene..... Naphthalin. (Crude or refined.)	*White, crystalline, volatile flakes or powder with a strong coal tar odor. Readily ignited by sparks. Gives off heavy, dense smoke when burning and will add materially to a fire. Gives off strong penetrating odor similar to camphor.* *Melting point about 175° F. Will evolve inflammable vapors at or below its melting point.* *Insoluble in water.* *Shipped in the form of flakes, balls, crushed, blocks, grains, tablets.* Stow away from foodstuffs, living quarters and explosives. Outside containers shall be marked either "Naphthalene" or "Naphthalin" or "Hazardous article."	No label required	Stowage: "On deck protected." "On deck under cover." "Tween decks readily accessible." "Under deck (in a cool, dry, well-ventilated hold)." Outside containers: Wooden barrels or kegs Wooden boxes. Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F.* Burlap (jute) bags, not over 224 lbs. net wt.	Stowage: "On deck in open." "On deck under cover." "Tween decks readily accessible." Outside containers: Wooden barrels or kegs Wooden boxes Fiberboard boxes *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt.	Ferry stowage (AA). Outside containers: Wooden barrels or kegs Wooden boxes. Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt., when transported within closed body vehicles.	Ferry stowage (BB). Outside containers: Wooden barrels or kegs. Wooden boxes Fiberboard boxes. *Authorized for Naphthalene having a melting point not lower than 167° F* Burlap (jute) bags, not over 224 lbs. net wt., when transported within closed railroad freight cars
Oakum. Twisted jute packing (rope) (treated or untreated).	*Oakum is the fiber of hemp or mixtures of hemp with other fibers and impregnated with pine tar or pitch or other similar substances. Marine oakum is usually made from long, soft pure fiber twisted and is the least hazardous of the various grades of oakum. Plumber's oakum is a mixture of hemp, tow and other fibers.* *Principal risk of these fibers in an oiled condition is their ready ignition by sparks.* Do not stow against bulkheads subject to heat or on deck in open in the rays of the sun. Stow bales in a manner to provide circulation of air and thus reduce chances of heating. Bales shall be marked either "Oakum" or "Hazardous article."	No label required	Stowage "On deck under cover." "Tween decks." Outside containers Wooden boxes. Bales. Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Stowage "On deck under cover." "Tween decks." Outside containers Wooden boxes. Bales Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Ferry stowage (AA) Outside containers Wooden boxes Bales Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted.	Ferry stowage (BB). Outside containers Wooden boxes. Bales. Bales shall be compressed reasonably tight and bound with wire, metal hoops, rattan, rope or withes. Unbaled or unboxed consignments shall not be accepted

Libelants' Exhibit 10 (Continued)

SCOPE OF THE VOYAGE: The carrier's general trade is between ports on or adjacent to the East Coast of North America (subject to clause 11 hereof) in any order and ports of Holland, Belgium and Germany in any order.

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Shipper's Marks & Numbers	Number of Packages	Description	Gross weight in kilos	Measurement
M C C BOSTON Made in West-Germany 3334 - 6666	3.333	LOADED ON DECK AT THE RISK OF THE OWNERS OF THE GOODS. bags hot pressed Crude Naphtaline In transit from abroad	304.970	

ORIGINAL

We herewith certify that the within mentioned goods have been actually shipped on board

BLACK GULL

p. proc. Van Nievelt, Goudriaan & Co

Freight paid

The goods specified in this Bill of Lading are to be forwarded by steamship's agents to .....
at merchant's risk and ..... expense,
by .....
(Subject to the terms of the transhipment clause contained herein.)

FREIGHT TO BE PREPAID [redacted]

Gross Weight Said To Be Kilos	Measurement Said To Be C B M	Rate	Dollars

Freight on Value said to be $ ..... at ..... per cent
do $ ..... at ..... per cent
do $ ..... at ..... per cent

ADVANCED CHARGES
COLLECTION FEE

Total $

Clause 27:
This contract is subject to Chamber of Shipping War Risk Clauses Nos. 1, 2 and 3 of August, 1937, which are deemed to be incorporated herein with the same force and effect as if fully set forth herein.

IN WITNESS WHEREOF, the master or agent of the said vessel has signed THREE Bills of Lading, all of this tenor and date, and if one is accomplished, the others shall be void.

Dated at ROTTERDAM, this 9 day of JULI 1952 19

BLACK DIAMOND STEAMSHIP CORPORATION
FOR THE MASTER

By VAN NIEVELT, GOUDRIAAN & Co., as Agents.

By: .....

Attention of shippers is called to the provisions of 18 U.S.C.A. Sec. 835 (Criminal Code 835 as amended), imposing upon shippers a penalty of $5,000 or imprisonment for 10 years or both, for delivering to a carrier packages containing explosives or other dangerous articles without having the contents plainly marked on the outside thereof, or without informing the agent of the carrier in writing of the true character thereof; and also, to the provisions of 46 U.S.C.A. Sec. 170, which provides that any person shipping oil of vitriol, inflammable matches or gun powder in a vessel which is a common carrier without delivering a note in writing expressing the nature and character of the merchandise to the person in charge of loading the vessel, shall be liable to the United States in the penalty of $1,000.

(CONDITIONS CONTINUED OVERPAGE)

30a 6-1-51-30,000

...withstanding Sec. 1 (C) thereof. Specially heated or specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

8. Live animals, birds and fish are received and carried at shipper's risk of accident or mortality, and the Carrier shall not be liable for any loss or damage thereto arising or resulting from any matters mentioned in Section 4, Sub-section 2, a. to p. inclusive of the Carriage of Goods by Sea Act or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived by the shipper. Except as provided above such shipments shall be deemed goods, and shall be subject to all terms and provisions in this bill of lading relating to goods.

9. If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and not set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects, are at fault in respect of a collision or contact.

10. General Average shall be adjusted, stated and settled, according to York-Antwerp Rules 1950, except Rule XXIII thereof, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the Port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices,

...valuation any under value is greater or less.

Valuation of goods not shipped in packages but susceptible of being so shipped shall not be greater under this paragraph than would be the case had they been shipped in packages.

12. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.

13. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped or printed, are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding. Nothing in this bill of lading shall operate to limit or deprive the carrier of any statutory protection or exemption from, or limitation of, liability. If required by the carrier, one signed bill of lading duly endorsed must be surrendered to the agent of the ship at the port of discharge in exchange for delivery order.

20. Cargo skids and labor on quay are to be provided by ship's agent for account of consignee at current rates, and any cargo which may be ordered for delivery into flenal depositu, must be taken by an official cartman appointed by the agent of the ship, at current rates for account and risk of consignee.

21. If any bagged or baled goods are landed slack or torn, receiver and/or consignee shall accept its proportion of the sweepings. Ship not responsible for loss of weight in bags or bales torn, mended or with sample holes.

22. Cotton: Description of the condition of the cotton does not relate to the insufficiency of or torn condition of the covering, nor to any damage resulting therefrom and Carrier shall not be responsible for damage of such nature.

23. Specie: Specie will not be shipped or landed by the Carrier; it must be put on board by the shipper, and will only be delivered on board on presentation of the bills of lading properly endorsed; it may be carried on at consignee's risk if delivery is not taken during the ship's stay in port, and in every case the liability of the Carrier shall cease when the specie leaves the ship's deck.

24. SPECIFIED DOCK DISCHARGE: If the carrier makes a special agreement, whether by stamp hereon or otherwise, to deliver the goods hereby receipted for at a specified dock or wharf at the port of discharge, it is mutually agreed that such agreement shall be construed to mean that the Carrier is to make such delivery only if, in the sole judgment of the Master, the ship can safely under her own power, proceed to, lie at, and return from said dock or wharf, always afloat at any time or tide, and only if such dock or wharf is available to the ship immediately the ship is ready to discharge the goods and, that otherwise, the ship shall discharge the goods in accordance with Clause 12 of this bill of lading, whereupon Carrier's responsibility shall cease.

25. Article 700, Maritime Code of The Netherlands, is expressly waived and renounced in respect to shipment of goods under this bill of lading.

26. In view of the issue in Holland of the revised Marine Code operative 1st of February 1936 it is expressly agreed that this bill of lading shall have effect as if such Code were herein incorporated, but only insofar as the provisions of the said Code are compulsorily binding upon the parties hereto. The ship's protest relating facts and circumstances exempting Owners from liability duly sworn to by the Captain and/or one or more members of the crew shall be deemed sufficient proof by parties to this bill of lading of such facts and circumstances.

THE RESPONSIBILITY OF EACH CARRIER IS LIMITED TO HIS OWN LINE.

FOR ENDORSEMENTS

Libelants' Exhibit 8

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW-YORK

A 174-34

In the Matter of the Petition of Skibs A/S Jolund, as owner of the M/S "Black Gull", in a cause of exoneration from and limitation of liability

A 178-380

MARIA ANGELINA VERBEECK, et al.,

Libellants

—against—

BLACK DIAMOND STEAMSHIP CORP.,

Respondent

It is hereby stipulated and agreed by and among the proctors for petitioner, the proctors for respondent, and the proctors for libellants and claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck as follows:

1. If Emile Vrints, Esq. here present at Antwerp and available to testify, were called to testify as a witness on behalf of libellants and said claimants, he would testify as set forth in his affidavit hereto annexed.

Libelants' Exhibit 8

2. If Maria Angelina Verbeeck, here present at Antwerp and available to testify, were called to testify as a witness on behalf of libellants and said claimants, she would testify as set forth in her affidavit hereto annexed.

3. Either or both of said affidavits may be offered in evidence by any party with the same force and effect as though the respective affiants had testified to the facts set forth in their respective affidavits.

4. The following documents, copies of which are annexed to this stipulation may be offered in evidence by any party at the trial, subject to objections as to materiality and relevancy:

a. Certified photostatic copy of certificate of death no. 156-52-116961 issued by the Bureau of Records and Statistics of the Department of Health of the City of New-York, N. Y. dated August 5, 1952.

b. Transportation permit no. 16961 of the same Bureau dated Aug. 4, 1952.

c. Three certificates of the Consul-General of the Kingdom of Belgium in the City of New-York, each dated August 6, 1952, having the Consul-General's reference numbers 4896, 4897 and 4898.

d. Copy of letter of Consul-General of Norway at New-York to Consulate General of Belgium at New York dated August 28, 1952, bearing the Norwegian Consulate General's refere .ce number 62/15/52.

e. Original letter of August 29, 1952 from Black Diamond Lines S. A. Antwerp to Mevrouw Weduwe Jozef Verbeeck, with handwritten translation into English set out thereon.

Libelants' Exhibit 8

f. Original letter of September 11, 1952 from Ministerie van Buitenlandse Zaken en Buitenlandse Handel to Aan Mevrouw Verbeeck.

Dated Antwerp, Belgium, August 5, 1955.

Proctors for Libellants and Claimants:
BIGHAM, ENGLAR, JONES & HOUSTON

Proctors for petitioner:
PYNE LYNCH & SMITH

Proctors for respondent and claimant:
DOW & SYMMERS

Emile Vrints, being duly sworn, deposes and says:

a. That he is a member of the bar of Antwerp, Belgium entitled to practice in all of the Courts of the Kingdom of Belgium excepting the Court of Cassation in which only 15 lawyers are permitted to practice.

b. That there is no provision in the laws of the Kingdom of Belgium for the payment of workmen's compensation or anything similar to that to maritime workers injured in the course of their employment on non-Belgian ships and no provision in said laws for the payment of workmen's compensation or anything similar to that to the widows, children or their dependent relatives of maritime workers killed in the course of their employment on non-Belgian ships.

c. That there is no treaty between the Kingdom of Belgium and the Kingdom of Norway by virtue of which a Belgian maritime worker injured in the course of his

employment on a Norwegian vessel may obtain the benefits of the Norwegian Workmen's Compensation statutes and or by virtue of which the widow, children or other dependents of such a worker killed in the course of such employment may obtain the benefits extended by the Norwegian Workmen's Compensation statutes to like dependents of Norwegian nationals.

d. That under the law of the Kingdom of Belgium, there is no specific age at which the obligation of a parent to support his children ceases, such obligation continuing so long as the need of the child for such support exists.

E. VRINTS

Kingdom of Belgium
Province and City of Antwerp
Consulate General of the
United States of America—ss.

SUBSCRIBED AND SWORN to before me Louise Dec. O'Grady Vice Consul of the United States of America, in and for the District of Antwerp, Belgium, duly commissioned and qualified, this 4th day of August 1955 A. D.

LOUISE DEC. O'GRADY
Louise Dec O'Grady
Vice Consul of the United States of America

(Seal)

Libelants' Exhibit 8

(Seal)

NO. 6289

AFFIDAVIT

The year Nineteenhundred fifty-five, this third day of August, Before me, Mr. Fernand Istas, notary public at Antwerp, substituting my colleague Mr. Antoine Cols, hindered,

Appeared:

Mrs. Maria Angelina *Verbeeck*, born Maria Angelina Anthoni, eatinghouse keeper, widow of Mr. Jozef Verbeeck, residing at Boechout, Heuvelstraat, 57,

Who declared:

a) That she was born on the twenty-eighth day of March nineteenhundred and five, and on the fifteenth day of May ninefeenhundred and twenty-five, she married Jozef Verbeeck at Vremde, at Saint Jan's Church;

b) That three children were born to them of that marriage, viz.:

1. Maurice Verbeeck, born on the twenty-fifth day of September nineteenhundred and twenty-five,

2. Simone Verbeeck, born on the twenty-sixth day of August nineteenhundred and twenty-seven, and

3. Leo Verbeeck, born on the sixth day of December nineteenhundred and twenty-eight;

c) That at the time of his death on the eighteenth day of July nineteenhundred and fifty-two, Jozef Verbeeck

was fifty years of age, having been born on the fourteenth day of March nineteenhundred and two;

d) That, at the time of his death and for some time theretofore, Jozef Verbeeck contributed between eighty thousand Belgian francs and ninety-six thousand Belgian francs per year to the support of his wife and children;

e) That she and Jozef Verbeeck were living together as wife and husband at Heuvelstraat 57, Boechout, at the time of his death;

f) That subsequent to the death of Jozef Verbeeck his body was returned from New-York to Belgium without expense to her; that she received through the Belgian Government the sum of dollars one hundred twenty-two and eleven cents ($122,11) stated to represent the amount still due to the deceased as wages as mess-boy on the steamship "Black Gull"; and through the same channel received the sum of dollars two hundred and nine, nineteen cents ($209,19), stated to represent the equivalent of one thousand fivehundred (1.500) Norwegian Crowns, which was stated to be compensation for loss of his clothing an' personal effects in the steamship "Black Gull";

g) That Black Diamond Lines, société anonyme of Antwerp paid for the plat of ground in the Boechout Cemetery at Boechout in which the body of Jozef Verbeeck was buried; paid the expenses of the funeral services; and paid certain other lesser expenses in connection with said funeral, including the printing of devotional pictures, the printing of death announcements, and the setting up of a mortuary chapel in decedent's home; and said Black Diamond Lines société anonyme sent flowers, and one van den Bergh, a Director thereof, attended the funeral services;

h) That of the contributions made by Jozef Verbeeck

to the support of his wife and children described in part d) hereof, the whole was devoted to the support of all of them, as all lived together in one household, none of the children being then married and it is unpracticable to state separately what part of said contributions inured solely to the benefit of each of them.

Intervening party:

Before closing the present instrument is here intervened Mr. Jean Vermeire, sworn translator to the Court of First Instance sitting at Antwerp, residing at Ekeren, Avenue Veltwyck 10/2, who has given to the appearer, Mrs. Verbeeck, a true and correct translation in the Flemish language of the foregoing statements and who certifies that the translation which follows is true and correct.

(Translation omitted in printing)

Oath:

Immediately afterwards Mrs. Maria Angelina Verbeeck, in testimony of the above declarations, has declared under oath that the foregoing statements are true.

Whereof the present instrument has been drawn up in only one original delivered this day.

After reading, the appearer has signed this instrument after the translation together with the intervening translator and me, notary public.

Libelants' Exhibit 9

Dr. Jules Aeby
Consulting Chemist

DANGEROUS GOODS

Third Edition

1 9 3 8

All Rights Reserved

Editions Lloyd Anversois
12, Rue Vleminckx
Antwerp

Each copy must bear the signature of the author.

Jules Aeby.

PREFACE

Published for the first time in 1910, this book was rapidly sold out already before the war and a second edition appeared in 1922, amended and completed subsequently by two "Supplements" respectively out of press in 1930 and 1934.

This third edition became almost a necessity since the addition of two Supplements to the second made the consultation of three volumes instead of one rather slow and difficult.

Libelants' Exhibit 9

Together the second edition and its two Suppiements contained 692 paragraphs; some have been suppressed, others amalgamated, so as to constitute now a total of 549 forming a "Nomenclature" re-written and modified when deemed necessary.

Further the packing and stowage are described with most of the goods whilst before such has only been the case exceptionally. I trust that, as a consequence, the usefulness of my book is increased and that it will find still more readers, helping to protect human lives as well as goods in water transport, as was its aim 28 years ago.

The following chapter "How to use this book" must be read carefully by all who wish to consult "Dangerous Goods" with advantage. As for the "Introductory and Explanatory Notes" they have been somewhat shortened as it is not so necessary anymore to justify my tentative.

More importance is attached now to explain what it is necessary to know in order correctly to interpret the text describing each commodity.

• • • •

Antwerp, April 1938

THE AUTHOR

HOW THIS BOOK SHOULD BE USED

The English, French and German names, together with the common synonyms of more than five hundred different products, are given in alphabetical order in the "Index". Beside each name, in the Index, a figure is given referring to the number in the text and not to the page. Here the reader will consult the notes on the substance, using the language most familiar to him. He will

also find above and below the principal name, the chemical formula with notice as to whether the body is solid or liquid, an organic compound or not.

The chemical formula will eventually facilitate the identification of a substance; as to the mention of *solid* or *liquid*, it is scarcely necessary to remark on its utility. *Organic compounds* are generally capable of burning when fire is applied, as contrasted with inorganic compounds which, as a rule, have not this property.

The interpretation that will be given to the notes characterizing each body and the use made of the indications given for *packing* and *stowage* will of course vary according to the different categories of readers. I cannot do more than earnestly request them to read the "Introductory and explanatory Notes" that follow, so that they may be in a position to use this book in the spirit in which it has been written.

As much as possible, a certain space has been reserved below each product for manuscript notes.

INTRODUCTORY AND EXPLANATORY NOTES

Origin, need and utility of this book.—During nearly forty years, I have given to the principal Shipping Companies at Antwerp and mainly to the "Société Anonyme de Navigation Belge-Américaine Red Star Line" whose consulting-chemist I was until 1935, information as to the properties of chemical products from the point of view of their possible danger in transport. Further, shipbrokers and agents, charterers and stevedores, also insurance companies and the insured, average adjustors, judges and lawyers, forwarding agents and others have consulted

me about the eventual danger of certain goods. I have frequently acted as expert before the law-courts, or for insurers or assured, concerning statements of averages caused by the presence in cargo of inflammable, explosive or otherwise troublesome substances. Thus occurred the idea to write this book which first appeared in 1910, by putting together my experience and information gathered from the most various sources. Indeed there did not exist, to my knowledge at least, a work comparable to mine, whilst at the same period, at the Seventh Congress of Applied Chemistry, held in London in May and June 1909, Dr. C. A. von Martius of Berlin presented a most interesting report entitled "The Transport of Dangerous Goods on Merchant Vessels" where stress is laid on the necessity of unifying internationally the prescriptions for the transport of dangerous goods by water. By all this the existence of this book seemed justified and its reception by the public and the press as much as the selling out of two editions completed by two "Supplements" prove that its aim has been attained.

• • • •

Definition and classification.—The first question that comes before us and which must be examined, however briefly, is that of what is to be understood by "*dangerous*" merchandise. Let me put stress on the fact that I have used the term "dangerous" appearing in the title of this book already, in its widest possible signification and that the reader must adapt the description for a given article to the existent conditions; the shipowner, the shipping agent, the stower, the underwriter or the manufacturer of chemicals will not necessarily give the same interpretation to my description. What I wish to be understood as *dangerous goods* could be more closely defined as follows: those which of themselves or by reason of chance

circumstances may give rise to difficulties or cause accidents during transport by boat. Thus understood, we may divide "dangerous goods" into five classes:

A) Those that are explosive;

B) Those that are inflammable;

C) Those that are corrosive or caustic;

D) Those that give off evil smells;

E) Those that are poisonous.

A commodity which does not fit into one of these five classes can, in general, be declared as "non-dangerous", but many products belong to more than one of these classes and have therefore to be specially watched.

A classification has only a relative value and, in my opinion, each merchandise must be considered on its own merits. If, notwithstanding this, I give some details and subdivisions of the five established classes, the main reason is to emphasize the complexity of the subject and to permit the reader better to interpret certain descriptions of products as given in this book.

• • • •

B. Inflammable Merchandise:

We must not confuse combustible with inflammable. Combustible means capable of burning, that is of being consumed with or without flame when heat is applied. Thus nearly all organic matter, i.e. that which contains carbon, such as wood, coal, paper, etc. is combustible. By inflammable, on the other hand, we understand a substance which at a more or less high temperature gives off such gases as, in the presence of a naked flame, ignite

or explode. The temperature at which this phenomenon occurs is called "flashing point" or "flash point" (1) and is determined by the Abel-Pensky apparatus. It is clear that the lower the flash point of a liquid, the greater is the danger. The flash points of different substances vary very much, thus ether and bisulphide of carbon flash already under 32°F., alcohol at the ordinary temperature of 57 to 68°F., olive oil at above 419°F. It is clear that as far as fire danger exists, the flash point is a serious criterion and deductions can be drawn from the following information:

In England such liquids as have a flash point below 73°F. (about 23°C.) are considered to be of "special danger", those that flash between 73°F. (about 23°C.) and 150°F. (about 65°C.) are classified as being "less risky".

The Germans call "liquids dangerous as regards fire" (feuergefährlich) those that have a flash point under 70°F. (21°C.) They further distinguish "liquids able to burn readily" (leicht brennbar) flash point between 70°F. (21°C.) and 131°F. (55°C.), "able to burn" (brennbar) flash point from 131°F. (55°C.) to 212°F. (100°C.) and finally such that "burn with difficulty" (schwer brennbar) flash point above 212°F. (100°C.).

In the United States of America "inflammable liquids" are those whose flash point is under 81°F. (27°C.), whilst those flashing between 81°F. (27°C.) and 151°F. (66°C.) are "combustible liquids". By taking the average of these data recognized in England, Germany and the U.S.A., and such an average is well justified seeing the small differences, we come to the conclusion that *a serious danger exists with liquids of flash point under 75°F. (24°C.), whilst those flashing between 75°F. (24°C.) and 144°F. (62°C.) are less to be feared.*

(1) "Ignition point" denotes the temperature at which a body continues to burn; in practice we may rest satisfied with "flash point".

Libelants' Exhibit 9

Following the 549 paragraphs of my publication, I establish hereafter tables of the two categories of liquids.

• • • •

Flash points between 75 and 162°F.

1) Acetic acid.... about 115°F.
2) Aceto acetic acid ethyl ester.... between 70 and 131°F.
3) Adronol acetate.... 135°F.
4) Amyl acetate.... between 70 and 95°F.
5) Amyl alcohols.... about 108°F.
6) Amyl butyrate.... between 70 and 131°F.
7) Benzol dichloride (ortho).... 144°F.
8) Butyl acetate, normal.... 75-77°F.
9) Butyl alcohols.... 93°F.
10) Camphor.... 126°F.
11) Chlor toluene.... between 70 and 131°F.
12) Cumene.... between 70 and 131°F.
13) Cyclo hexanone.... 111°F.
14) Diacetone alcohol.... 113°F.
15) Diethyl sulphate.... between 70 and 131°F.
16) Ethyl glycol acetate.... 117°F.
17) Ethyl lactate.... between 70 and 131°F.
18) Ethyl valerate, iso.... between 70 and 131°F.
19) Ethylene chlorhydrine.... between 70 and 131°F.
20) Ethylene glycolethyl ether.... 104°F.
21) Furfurol.... about 122°F.
22) Glacial acetic acid.... about 111°F.
23) Iso amyl nitrate.... between 70 and 131°F.
24) Iso butyl alcohol.... about 90°F.
25) Methyl cyclo hexanon.... 113-131°F.
26) Methyl glycol.... 97°F.
27) Methyl glycol acetate.... 111°F.
28) Methyl phenyl ether.... between 70 and 131°F.
29) Monobrom benzine.... between 70 and 131°F.

Libelants' Exhibit 9

30) Mono chlor benzene.... under 80°F.
31) Naphtalene.... 125°F.
32) Oxalic diethyl ester.... between 70 and 131°F.
33) Pyrrol.... between 70 and 131°F.
34) Tar.... between 73 and 150°F.
35) Terebene.... between 70 and 131°F.
36) Tetrapol B.... about 90° F.
37) Turpentine.... 95°F.
38) Valerate of amyl.... between 70 and 131°F.

The flash point has only been established for a comparatively small number of liquids and no doubt it should at least be known for all commodities usually found in trade. In most cases the manufacturers will be able to supply the information. When the flash point is not known, an indication about the degree of danger can be found in the boiling point. If the latter is comparatively low f.i. under 122°F. prudence will be required, because even if the vapours of the boiling liquid are not inflammable, they may spoil the packing and surrounding goods.

• • • •

Inflammable Merchandise may be subdivided as follows:

a) *Substances spontaneously inflammable,* i.e. in themselves and without the presence of a naked flame. Such are, for instance, white phosphorus when not kept under water, zinc ethyl, resinate of cobalt, etc. Further there are wet hay, cotton, celluloid waste and other goods quoted in this book, which can heat themselves up to ignition. It is evident that the products subject to spontaneous combustion are the most dangerous.

b) *Those which are inflammable at or below ordinary temperature in presence of a flame:* a large number of these products is quoted in above list (page 30) and

they must be carefully watched especially when their vapours are explosive in mixture with air.

c) *Bodies,* which under normal conditions present no difficulties, but *which under certain circumstances may give off combustible or explosive gases:* of such I may name iron-filings or granulated zinc, aluminium in powder, etc which by reason of dampness, acids or alkalis may give off hydrogen, a combustible and explosive gas; carbide of calcium which, in contact with water, gives off acetylene, a poisonous and explosive gas.

d) *Substances of which the dust in suspension in the air is inflammable:* as colophony, naphtalene, lycopodium.

e) *Substances capable of gathering heat and igniting the organic bodies which they impregnate:* such as fats in rags and cotton waste.

f) *Oxidising agents:* must be specially mentioned because they are numerous and their mixture and friction with organic matters like straw, wood shavings, even sweepings, have more than once occasioned fire; see permanganate of potash, chlorates, etc.

Here an example of my practice: in a case of goods damaged by seawater, I was shown barrels containing bichromate of sodium. These barrels had been made a little damp by sea-water with the result that the packing paper with which the interior of the casks was lined, had become impregnated with bichromate. Now this paper, thus impregnated, was much more easily inflammable than ordinary paper and constituted a greater danger by reason of this secondary cause.

Nitrate of soda, another typical oxidising agent, deserves here a few lines. Despite a rather widespread idea to the contrary, nitrate in itself presents no danger: it will not even take fire and one may plunge hot iron into it without harmful results. But since nitrate is always

more or less damp, and further since it absorbs moisture from the air, it impregnates the bags in which it is packed and these bags, when they have become dry again, are very easily inflammable. An expert captain sent to Chile many years ago, expresses himself as follows:

"The origin of the frequent conflagrations on nitrate ships can usually be traced to carelessness. On many sailing boats and steamers the holds are not closed at night and are therefore exposed to danger. This is particularly the case in the hold near the men's quarters, where the sailors smoke and throw matches and the ends of cigarettes on the bags of nitrate. Insurance companies ought to require all the holds to be closed every evening and they should forbid the use of petroleum lamps and naked flames."

g) *Bodies that may be fired by sparks:* such are straw, hay, pulp, etc. This is the least dangerous class. They can be rendered almost harmless by being transported in packages or at least by being subjected to hydraulic pressure, in such a way as to give no chance to flame or sparks.

• • • •

D. Merchandise which gives off evil odours:

Here as in the case of corrosive products the degree of danger depends on the packing. The word "dangerous" when used in connection with strong smells may seem an exaggeration and might be replaced by the word "troublesome". It must be observed however that besides merchandise which has a disagreeable and even nauseating smell (hydrogen sulphide, assa foetida), there are substances which emit asphyxiating or anaesthetic gases as f.i. bromine and chloroform. Others again, such as chloride of lime, give off discolouring gases. As in the former

case the degree of danger is conditioned to a very considerable extent by the same factors heat and water. In general it may be said that high temperatures favour the emission of odours.

• • • •

The following is a summary in tabular form of the classification determined on for this book:

A. Explosive Merchandise
- a) spontaneously
- b) by fire, friction, shocks, blows, etc.
- c) when mixed with other bodies
- d) by decomposition

B. Inflammable Merchandise
- a) spontaneously
- b) by approaching a flame
- c) giving off combustible or explosive gases
- d) whose dust is inflammable
- e) generating heat when impregnating organic matters
- f) taking fire by spark

C. Corrosive or Mordant Merchandise

D. Evil-smelling Merchandise

E. Poisonous Merchandise

It is obvious however that apart from this classification there are cases which deserve our attention although they may present less danger and be met with less frequently than those described above. I have in mind, for example, merchandise capable of *tainting* the goods in its immediate neighbourhood, such as aniline oil; merchandise that attracts water and is *deliquescent* such as calcium chloride and nitrate of lime and which may therefore ooze out of of its receptacle if this is not very tight.

Further there are products *whose melting point is low* and which therefore must be kept cool or at least at low temperatures, f.i. bornyl acetate which melts at 82° F.

Libelants' Exhibit 9

Packing and Stowage.—As mentioned in the Preface already, much more importance is given in this edition to the packing and stowage of the various goods. It must be realized indeed that the degree of danger depends greatly on the more or less careful packing; if the latter gives an almost complete guarantee of resistance, the risk is practically nil. It is known however how much strain lies on board ships even on the most perfect packings. For many commodities I have suggested types of packings by observing what is done in practice and by taking as guide the description given. From this the reader must not conclude that the quoted packing is compulsory and he is requested to use his own judment: consider whether large or small quantities are to be transported and whether the necessary precautions have been taken for possible breakage of the packing (glass or earthenware). In general, bottles or demi-johns containing corrosive acids are lodged in baskets or metallic crates, surrounded by absorbent incombustible matter. This is what I call in the descriptions "protected containers". An important rule which must never be lost sight of and which has therefore been frequently repeated, is not to fill the containers overmuch in order to permit expansion of the liquid in case the inner temperature rises. As regards liquefied or compressed gases, the steel bottles or cylinders in which they are lodged must have been duly tested and the valves should be well protected.

As far as I am aware, the temperature has never been methodically taken in the holds and hottest parts of ships. It is certain that these temperatures, especially in tropical regions and in case of absence or insufficiency of ventilation, often rise in a wholly abnormal manner. A serious study of the question of temperatures on board ship and especially in the holds would be eminently desirable.

Libelants' Exhibit 9

If the safety on board a ship depends largely on the nature of the goods and on their packing, it is clear however that the way they are stowed plays an important role. For this reason I have mentioned as often as possible whether loading should be done on or under deck, in the open, covered 'tween decks, etc. but here as for the packing those who consult my book must take my indications as suggestions only; they must consider the kind of ship, the length of her journey, the climates to be passed through, the possibilities of removing the goods in case of fire, etc. The stevedore will never lose sight of the fact that many products which are harmless in themselves keep the fire going and may thus become a secondary cause of disaster. I shall explain by means of an example: fire breaks out in a barrel of benzine in the neighbourhood of which steel rails have been placed; the flames find no food and danger is easily averted. But if instead of rails the barrel is surrounded by nitro-compounds, straw, wood or something similar, there will be such a fire as it will be very difficult to overcome.

• • • •

Basal Principles.—Before deciding to publish this book, I hesitated not a little. What should be done to give the maximum of satisfaction to all? How could the book be made complete without being too long? What means were there to render it at once popular and scientific?

My first idea was to name all *negotiable* products, i. e. those which are the subject of trade of some importance, and to say of each whether it is not in any way troublesome, and whether it is or is not dangerous. Business practice, indeed, always asks for a short and categorical reply, and needs only to know whether there is danger or not. I was soon obliged to give up this idea of naming all products, for, if not entirely unattainable, it presents difficulties almost impossible to surmount, in the form of the

immense number of products, which, moreover, increases daily. In limiting myself solely to the mention of *dangerous* merchandise, I tell him who consults my book that a product whose name does not occur in it, probably presents no danger, but of this he cannot be absolutely certain, for no one will ever be able to rely on the completeness of a list.

After these words, it will perhaps seem surprising that I have named certain products which are not the subject of regular commercial transactions, and which have, so to speak, only a scientific interest. As to this point, I would say that many of these products have, to my knowledge, been forwarded as samples, and it seems to me that when one is concerned with very dangerous products, it is important to be as complete as possible.

For the most part, the merchandise that I have mentioned belongs to the category of chemical products, but some exceptions have been made in the case of important articles on the subject of which it is extremely necessary to have information.

I have as far as possible avoided giving collective names, as alkaloids, pharmaceutical products, chemical manures, aniline dyes, etc. If, however, my list contains a few of those most frequently used, it is principally because I wished to repeat several times in the text that this course of proceeding seemed to be inadmissible, and that an exact and complete terminology must always be required.

A word as to terminology and orthography. It was necessary of course to give the English, French and German names of all the products, with as many synonyms as possible. The mention of names entirely chemical and non-commercial such as "dimethyl-ketone" for "acetone", "dioxide of carbon" for "carbonic acid", may seem unnecessary. But experience has shown me that these terms are sometimes used to conceal from the public

the nature of a product, and I thought it well to diminish as far as possible the effectiveness of this not over honest practice, against which, however, there is little in a strictly legal sense to be said.

Desiring to have the synonyms as complete as possible, I have quoted some double names in English with their inversions, as "sulphate of copper" and "copper sulphate"; the object of this was to facilitate the use of the index.

The orthography of German names has caused some difficulty. Certain writers of strong germanising tendencies now write Kalzium instead of Calcium, Zitrat instead of Citrat, Azetyl instead of Acetyl, etc. I take the liberty to observe that, for a book intended for international use, this seems to me unpractical, and I abide by the old spelling. The latter is nearer the derivation of the word and more closely resembles French and English orthography.

The degrees of temperature have been given in Centigrade in the French and German texts, and in Fahrenheit in the English part.

Conclusion.—Before closing, I ask the reader's indulgence in pointing out that it is not sufficient to *read* the notes in which the various articles of merchandise are described; they must also be *interpreted*, for it should not be forgotten that this book is intended for very different categories of persons concerned with the subject, and my responsibility must always remain free; where I should appear too strict to one, another might reproach me for imprudence.

The three points essential above all things to be considered, seem to me the following:

1. In what physical state is the product (liquid, solid or gas)?

2. How is it packed: in glass, barrel, can, etc.?

3. How is it stowed?

Libelants' Exhibit 9

It is obvious that this latter may be done carefully or not very carefully, the goods may be packed level or otherwise, they may be isolated, dangerous contact may be avoided, the temperature may be considerd, and so forth.

One cannot be too strict with regard to the declarations to be made by producers, both as regards exact terminology and as to the nature and characteristics of the product. No one of course can be better informed on the subject than the producer, and it is on him that the final responsibility will always fall.

On the other hand, the decisions of the law courts (Fels Naphta Soap) have proved that if the producer has concealed nothing as to the nature of his merchandise, no responsibility can be imputed to him, but all must rest on the transporter. Hence, in many cases, I have in this book recommended that the producer be required to furnish a declaration certifying that the goods are not dangerous.

It is true that this certificate will not prevent accidents, but it will often serve to cover losses caused by imprudence or by a criminally avaricious spirit.

* * * *

Libelants' Exhibit 9

C^{10} H^{8}

Naphtalene or **Albo-carbon**
Coal tar camphor
Solid **Creosote salts (crude naphtalene)**
Organic compound **Moth balls**
Naphta balls
Tar camphor
White tar

Strong odour. Volatile. Inflammable: flash point 125°F. Its vapours mixed with air are more or less explosive. Crude naphtalene (creosote salts) is more dangerous than the refined. The melting point of the latter should not be below 167°F.

Packing: Bags, cases, barrels or drums according to kind.

Stowage: On deck, covered and protected from the rays of the sun or under deck, in a cool and well-ventilated compartment, away from living quarters and foodstuffs.

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Libelants' Exhibit 10

EXPLOSIVES OR OTHER DANGEROUS ARTICLES ON BOARD VESSELS

REGULATIONS PRESCRIBED BY THE COMMANDANT OF THE COAST GUARD

(Emblem)

APRIL 9, 1941

(REVISED JULY 17, 1950)

CG 187

TREASURY DEPARTMENT

UNITED STATES COAST GUARD

WASHINGTON

There Are No New Regulations in This Pamphlet Which Have Not Been Published in the Federal Register. This Pamphlet Includes All the Regulations Promulgated and Published on or Before July 17, 1950

Libelants' Exhibit 10

TREASURY DEPARTMENT
UNITED STATES COAST GUARD

EXPLOSIVES OR OTHER DANGEROUS ARTICLES ON BOARD VESSELS

REGULATIONS GOVERNING THE TRANSPORTATION, STORAGE, STOWAGE, OR USE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

(Emblem)

APRIL 9, 1941
(REVISED JULY 17, 1950)
CG 187

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1950

UNITED STATES COAST GUARD HEADQUARTERS,
Washington, D. C., July 17, 1950.

The regulations in this booklet are applicable to all vessels subject to the provisions of R. S. 4472, as amended (46 U. S. C. 170). The requirements for handling, stowage, storage, and transportation of explosives or other dan-

gerous articles or substances and combustible liquids on board vessels (foreign and domestic) on any navigable waters within the limits of the jurisdiction of the United States, including its territories and possessions, are set forth herein. These regulations do not cover the transportation of inflammable or combustible liquid cargo in bulk and such requirements are published in a separate pamphlet entitled, "Tank Vessel Regulations."

These regulations replace the publication entitled "Explosives or Other Dangerous Articles on Board Vessels," dated April 9, 1941, as revised July 1, 1947, and "Amendment Sheets to Explosives or Other Dangerous Articles on Board Vessels" distributed June 1, 1949. This edition contains all the amendments to the regulations promulgated and published in the Federal Register between April 9, 1941, and July 17, 1950. The changes published in the Federal Register since the Amendment Sheets were distributed June 1, 1949, are contained in Federal Register Document CGFR 49-43 which was published January 11, 1950, in the Federal Register. Section 146.04-5 was amended by deleting the articles "iron oxide," "iron sponge," and "iron sponge, spent," and inserting the articles "iron mass, spent," "iron mass, wet," and "iron oxide, wet," "iron sponge not properly oxidized," "iron sponge, spent," "iron sponge, wet," and "spent oxide." Section 146.09-6, regarding portable magazine chest was completely revised. Table E—Classification: Inflammable Solids and Oxidizing Materials in section 146.22-100 was amended by adding requirements regarding "iron sponge not properly oxidized," "iron mass, spent," "iron sponge, spent," and "spent oxide" and the shipping requirements for "pyroxylin plastics, rods, rolls, sheets, or tubes," and "film support (nitro-cellulose base)" were amended. Paragraph 146.23-10 (b) was amended by adding a new subparagraph (6), providing special approval of the Commandant to

allow the discharging of sulfuric acid in bulk at a pressure of more than thirty pounds per square inch. Section 146.24–15 was amended by changing paragraphs (a) and (l) regarding liquid chlorine in bulk and its transportation with liquid caustic soda. Table K—Classification: Hazardous Articles in section 146.27–100 was amended by deleting requirements for "iron sponge (iron oxide)," and "iron sponge, spent," and new requirements were added for "iron mass, wet"; "iron sponge, wet"; and "iron oxide, wet." Editorial changes in sections 146.03–36 (c) (2), 146.04–5, 146.21–100, and 146.24–100 were also published in the Federal Register, July 15, 1950, as a part of Federal Register Document CGFR 50–16. The publication is reprinted at this time because the supply of the basic edition is exhausted. There were no amendment sheets distributed containing only the changes published January 11, and July 15, 1950.

General authority over and responsibility for the administration and enforcement of the laws and regulations governing the transportation, storage, stowage, or use of explosives or other dangerous articles or substances and combustible liquids on board vessels in the several Coast Guard districts are vested in and imposed upon the Coast Guard District Commanders in charge of such districts.

Shippers, shipowners, operators, vessels' operating forces, and all other persons transporting, carrying, conveying, handling, storing, or stowing on board vessels subject to the requirements of R. S. 4472, as amended, and the International Convention for the Safety of Life at Sea, 1929, any explosives or other dangerous articles or substances and combustible liquids should familiarize themselves with the provisions contained herein. To this end, Coast Guard personnel concerned with the adminis-

tration and enforcement of these requirements will extend every possible assistance.

MERLIN O'NEILL
Merlin O'Neill,
Vice Admiral, U. S. Coast Guard,
Commandant.

CG Distribution (SDL No. 42):
A: None.
B: e (35); c (9); d (2); b f (1).
C: m (1).
D: i m (1).
E: e l m (1).
List 112. (Per special distribution sheet.)

SUBPART—PREFACE

146.01–1 Purpose of regulations.—The purpose of the regulations in this subchapter is to promote safety in the handling, stowage, storage and transportation of explosives or other dangerous articles or substances, and combustible liquids, as defined herein, on board vessels on any navigable waters within the limits of the jurisdiction of the United States including its territories and possessions excepting only the Panama Canal Zone, and to make more effective the provisions of the International Convention for Safety of Life at Sea, 1929, relative to the carriage of dangerous goods.

146.01–2 Source of regulations.—The Commandant of the Coast Guard shall by regulation define, describe, name and classify all explosives or other dangerous articles or substances, and combustible liquids and shall establish such regulations as may be necessary to make effective the purpose intended.

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146.01–3 Plan of regulations.—Regulations setting forth general requirements covering the transportation of explosives or other dangerous articles or substances, and combustible liquids will be found in §§ 146.01–1—146.10–50. Regulations setting forth detailed requirements applicable to individual substances will be found under their particular classification in §§ 146.20–1—146.27–100.

146.01–4 Classifications.—Explosives or other dangerous articles or substances, and combustible liquids are classified in the regulations in this part according to their principal characteristics and properties as follows:

Explosives:
- Class A—Dangerous Explosives.
- Class B—Less Dangerous Explosives.
- Class C—Relatively Safe Explosives.

Inflammable Liquids.
Inflammable Solids and Oxidizing Materials.
Corrosive Liquids.
Compressed Gases.
Poisons:
- Extremely Dangerous Poison, Class A.
- Less Dangerous Poison, Class B.
- Tear Gases or Irritating Substances, Class C.

Combustible Liquids.
Hazardous Articles.

146.01–5 Changes in regulations.—Changes in regulations usually result from the development of new information, altered conditions, improvement in manufacture, or modernized commercial practices. Proposals for changes will be considered by the Commandant of the Coast Guard on his own motion or upon a request submitted by any carrier interest, by industry, or other interested party.

146.01–6 Provisions for notice and public hearing.—Additions, alterations, amendments or repeals of any of the regulations in this subchapter except in an emergency, shall be published and public hearings with respect thereto shall be held on such notice as the Commandant of the Coast Guard deems advisable under the circumstances. Any additions, alterations, amendments or repeals shall, unless a shorter time is authorized by the Commandant of the Coast Guard, take effect ninety (90) days after their promulgation.

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146.01–7 Inflammable or combustible liquids in bulk.—Nothing in the regulations in this part shall be construed as affecting the transportation of inflammable or combustible liquids in bulk, such transportation being governed by the regulations promulgated under the provisions of section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a).

146.01–8 Effective date of regulations.—The regulations in this subchapter shall become effective on and after April 9, 1941.

146.01–9 Supersedes existing rulings.—All rulings in existence on the effective date of the regulations in this part regarding transportation, packing, marking, labeling or storage, as cargo, of explosives or other dangerous articles or substances, and combustible liquids, on board vessels as promulgated by the office of the Director of the Bureau of Marine Inspection and Navigation are superseded by the regulations in this part; except nothing in this provision shall be construed as affecting the transportation of inflammable or combustible liquids in bulk under the provisions of section 4417a of the Revised Statutes, as amended (46 U.S.C. 391a).

146.01–10 Supersedes existing regulations.—General Rules and Regulations in existence on the effective date of the regulations in this part regarding the transportation, packing or stowage, as cargo, on board passenger vessels of hay, straw, baled cotton, baled hemp, or other inflammable material, and refined petroleum having a flashpoint of not less than 110° F., lubricating oils, kerosene or other illuminating oils as promulgated by the Board of Supervising Inspectors of the Bureau of Marine Inspection and Navigation are superseded by the regulations in this part.

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146.01–11 Other requirements under Title 52 of the Revised Statutes.—Nothing contained in the regulations in this subchapter shall be construed as relieving any vessel subject to the provisions of the regulations in this part from any other of the requirements of Title 52 (Secs. 4399 to 4500, inclusive) of the Revised Statutes or acts amendatory or supplementary thereto and regulations thereunder applicable to such vessel, which are not inconsistent herewith.

146.01–12 Local regulations.—Nothing in the regulations in this subchapter shall be construed as preventing the enforcement of reasonable local regulations, now in effect or hereafter adopted, when such regulations are not inconsistent or in conflict with the provisions of the regulations in this part.

SUBPART—GENERAL REGULATIONS

146.02–1 Scope of regulations.—(a) The regulations in this part define explosives or other dangerous articles or substances, and combustible liquids for purposes of safety in transportation or storage on board vessels;

(b) Set forth the requirements that shall be observed in the preparation and packing of explosives or other dangerous articles or substances, and combustible liquids for shipment or storage on board vessels;

(c) Set forth the descriptive name, shipping name, requirements relative to certification, containers, marking, labeling, information required on bills of lading or other shipping papers, manifests or cargo stowage plans;

(d) Set forth the provisions under which permitted explosives or other dangerous articles or substances, and

combustible liquids within the scope of the definitions given herein, may be accepted, handled, stored, stowed, or transported on board vessels, and with respect to rejection and report of faulty containers and the disposition of any explosives or other dangerous articles or substances, and combustible liquids found to be in an unsafe condition when on board a vessel;

(e) Establish such other requirements as may be necessary to make effective the purposes of R.S. 4472, as amended.

146.02-2 Application to vessels.—The regulations in this part apply to all vessels, domestic or foreign, regardless of character, tonnage, size, service and whether self-propelled or not, whether arriving or departing, or under way, moored, anchored, aground, or while in drydock to the extent and in the manner indicated herein.

(a) The regulations in this subchapter shall not apply to any public vessel which is not engaged in commercial service.

(b) The regulations in this part shall not apply to any vessel subject to the provisions of R.S. 4417a, as amended, which is constructed or converted for the principal purpose of carrying inflammable or combustible liquid cargo in bulk in its own tanks, except such vessel shall be subject to the provisions of R.S. 4472, as amended, with respect to explosives prohibited to be transported, stored, or stowed on board any vessel.

(c) Regulations with respect to explosives prohibited by subsection 3, of R.S. 4472, as amended, apply to all vessels.

(d) Regulations with respect to the transportation, storage, or stowage of high explosives on board passenger

vessels apply to all vessels defined as "Passenger Vessels" in § 146.03–36.

(e) Regulations with respect to the transportation, storage or stowage of high explosives on board vessels, other than passenger-carrying vessels, apply to all vessels defined as "Barges" or "Cargo Vessels" in § 146.03–36.

(f) Regulations with respect to the transportation, storage or stowage of explosives (other than high explosives) or other dangerous articles or substances apply to all vessels, except vessels specifically exempted from such regulations by the provisions of R.S. 4472, as amended, or vessels that are, or may be, specifically exempted by the regulations in this part. Vessels specifically exempted by R.S. 4472, as amended, are:

(1) Vessels not exceeding fifteen (15) gross tons when not engaged in carrying passengers for hire;

(2) Vessels used exclusively for pleasure;

(3) Vessels, not exceeding five hundred (500) gross tons while engaged in the fisheries;

(4) Tugs or towing vessels, except as to fire prevention and extinguishing requirements provided for by subsection 6 (b) (iv) of R.S. 4472, as amended;

(5) Cable vessels, dredges, elevator vessels, fireboats, ice-breakers, pile drivers, pilot boats, welding vessels, salvage and wrecking vessels.

(g) Inflammable or combustible liquid cargo in bulk is also exempt from the regulations in this part: *Provided, however*, That the handling and stowage of such liquid cargo in bulk, on board vessels to which the regulations in this part may apply, shall be subject to the provisions of section 4417a of the Revised Statutes, as amended.

(h) Regulations with respect to the transportation, storage, or stowage of combustible liquids packed in barrels, drums, or other packages apply only to passenger vessels.

146.02–3 Application to shippers.—Regulations with respect to definitions, descriptive name, shipping name, packing, marking, authorized containers, labeling and certification of shipments of explosives or other dangerous articles or substances, and combustible liquids, apply to all shippers offering such articles or substances for transportation or storage on board vessels to which the regulations in this part apply.

146.02–4 Application to others.—The provisions of the regulations in this part, insofar as applicable to them respectively, are binding upon owners, charterers, agents, masters, or persons in charge of vessels subject to these regulations and upon all other persons transporting, carrying, conveying, handling, storing or stowing on board such vessels any explosives or other dangerous articles or substances, and combustible liquids.

146.02–5 Compliance.—The applicable provisions of the regulations in this part shall be observed by:

(a) All vessels, domestic or foreign, subject to the regulations in this part, and the owners, charterers, agents, masters or persons in charge of such vessels;

(b) Railway or highway carriers and their operators, owners, agents or representatives when vehicles operated by such carriers and loaded with explosives or other dangerous articles or substances, and combustible liquids are offered for transportation or enter on board a vessel;

(c) All shippers, their agents or other persons offering explosives or other dangerous articles or substances, and combustible liquids for transportation on board vessels;

(d) All persons engaged in the acceptance, handling, stowage, storage or transportation of explosives or other dangerous articles or substances, and combustible liquids on board vessels;

(e) All shippers or carriers of explosives or other dangerous articles or substances, and combustible liquids shall instruct their employees relative to the provisions of the regulations in this part.

146.02–6 Enforcement.—(a) The provisions of R.S. 4472, as amended, and the regulations in this subchapter, shall be enforced by the U. S. Coast Guard of the Department of the Treasury. Enforcement officers may at any time and at any place within the jurisdiction of the United States board any vessel for the purpose of enforcing the provisions of the regulations in this subchapter.

(b) Any collector of customs may, when possessing knowledge that a vessel is violating any provisions of the statute or regulations established thereunder, by written order served on the master, person in charge of such vessel, or the owner or charterer thereof, or the agent of the owner or charterer, detain such vessel until such time as the provisions of the statute and the regulations in this subchapter have been complied with. The master, person in charge or owner or charterer, or the agent of the owner or charterer of a vessel so detained may, within five days, appeal to the Commandant of the Coast Guard who may, after investigation, affirm, set aside, or modify the order of the collector.

146.02–7 Military or naval forces.—The provisions of the regulations in this part shall not be construed to prevent the transportation of military or naval forces with their accompanying munitions of war and stores.

146.02–8 U. S. Army or Navy Department shipments.—Shipments of explosives or other dangerous articles or substances by, for, or to the Army or Navy Depart-

ments of the United States government shall be packed, including limitations of weight, in accordance with the Interstate Commerce Commission regulations for the transportation of explosives or other dangerous articles in effect at time of shipment, unless special packing is required by specific directions of the Army or Navy Departments. Such shipments may be accepted for transportation under either method of packing.

146.02–9 Canadian shipments.—Shipments of explosives or other dangerous articles or substances, as defined herein, which are packed, marked and labeled in conformity with the regulations of the Board of Transport Commissioners for Canada, may be accepted and transported on board vessels within the navigable waters of the United States provided their acceptance and stowage on board the vessel is in accordance with the regulations in this part for the substances involved and provided further that the bill of lading or other shipping paper carries the certifying statement of the shipper that the goods are packed, marked and labeled in accordance with the regulations of the Board of Transport Commissioners for Canada.

14€.02–10 Export shipments.—Shipments to a foreign country may be accepted for transportation when packed, marked, labeled and described in accordance with the regulations of the country of destination. The bill of lading or other shipping paper shall identify such shipments by the shipping name shown in the regulations in this part for the particular substance, and also shall certify that the packing, marking and labeling is in accordance with the foreign regulations and identify by title or otherwise such foreign regulations. Markings on export packages may be in the language of the country of destination. Labels as prescribed in the regulations in this part shall be affixed or printed or stamped upon such export

packages when offered for transportation in lots of one hundred (100) or less packages. Stowage on board a vessel shall be in accordance with the regulations in this part as applicable to the particular character of vessel.

146.02–11 Import shipments.—(a) Import shipments of explosives or other dangerous articles destined upon arrival at domestic ports for further transportation, in original containers, by common carrier by rail, or by common or contract carrier by motor vehicle, shall comply with the Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles in effect at the time of shipment. The importer shall furnish with the order to the foreign shipper, and also to the forwarding agent at the port of entry, full and complete information as to packing, marking, labeling, and other requirements as prescribed by the Interstate Commerce Commission regulations. (See § 146.05–14)

(b) Import shipments of explosives and other dangerous articles, and combustible liquids, accepted for transportation in a foreign port in outside metal or wooden barrels or drums not exceeding 110 gallons capacity, wooden boxes not exceeding 300 pounds weight of box and contents, or fiberboard boxes not exceeding 65 pounds weight of box and contents, which upon arrival at domestic ports are not destined for transportation in these original import containers by common carrier by rail or common or contract carrier by motor vehicle may be accepted on board vessels provided the shipper certified upon the bill of lading or other shipping paper that the container is in conformity with the regulations of the country of origin. If the country of origin has no regulations governing the transportation by vessel of the explosives and dangerous substances involved, the shipper shall certify that the container is so constructed as to maintain its complete integrity under all conditions likely to be encountered

during transportation. The master of the vessel, before accepting such import shipments, shall satisfy himself that the containers are sufficiently strong to stand, without rupture or leakage of contents, all risks ordinarily incident to transportation.

(c) Stowage of import shipments on board vessels shall be in accordance with the provisions of the regulations in this part.

146.02–12 Inspection of cargo.—(a) On all vessels, other than barges and magazine vessels storing explosives, an inspection of cargoes of explosives or other dangerous articles or substances shall be ordered by the master of the vessel during a voyage to insure that such cargo is carried with safety and that no damage caused by shifting cargo, spontaneous heating, leaking or sifting of containers or from other causes has been sustained since loading and stowage. On such vessels that have dangerous cargo stowed on board for a period exceeding twenty-four (24) hours temperature readings shall be taken at proper intervals and such temperatures recorded and retained as a record for each voyage. When any cargo is discovered to be in a dangerous condition from leakage, sifting, heating, wetting or other causes, such condition shall be corrected in such manner as the judgment of the master may dictate. All unusual circumstances divulged during inspection of dangerous cargo and any action taken as a result thereof shall be a subject for log entry.

(b) On all barges an inspection of the cargo shall be made by the person responsible to the owner, charterer or agent who is in charge of loading and stowing the cargo on board the barge after the stowage has been completed to insure that such stowage has been properly accomplished and that there are no visible signs of damage to any of the containers or apparent evidence of

heating, leaking or sifting of containers or escape of any of the contents of the containers.

(c) On all magazine vessels storing explosives an inspection of the cargo shall be made by the person in charge of the magazine vessel after the stowage has been completed to insure that such stowage has been properly accomplished and that there are no visible signs of damage to any of the containers or apparent evidence of heating, leaking or sifting of containers or escape of any of the contents of the containers.

(d) When inspecting cargoes of dangerous articles capable of evolving inflammable vapors as required in (a), (b), and (c) any artificial means of illumination shall be of a vapor proof type.

146.02–13 Report fires.—The Master of any ocean-going vessel having on board explosives or other dangerous articles or substances as cargo and about to enter a port of

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(5) Repairs shall not be undertaken in holds that have lately contained cargo consisting of inflammable solids or oxidizing materials until all precautions are taken to see that no residue of cargo is left to create a hazard.

(b) None of the foregoing provisions shall apply to permitted articles of ships' stores and supplies of a dangerous nature although provisions shall be taken to afford safe storage and protection to such stores from any risk incident to the repair work.

(c) Emergency repairs, contrary to the provisions set forth above, may be undertaken when in the judgment of the master such repairs are necessary for the safety of the vessel, its passengers and crew.

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146.02–21 Statements of characteristic properties.—In the second column of the tables shown in §§ 146.20-100; 146.21-100; 146.22-100; 146.23-100; 146.24-100; 146.25-100; 146.26-100; and 146.27-100 are statements in italics setting forth certain characteristic properties of the substances listed therein. It is not intended, that these statements set forth all the characteristic properties of a particular substance and such statements as are shown are informative only.

146.02–22 Preservation of records.—(a) Where the regulations in this part require the preparation of shipping orders, manifests, or other shipping documents, cargo lists, cargo stowage plans, reports and any other papers or records, it shall be the duty of the owner of the vessel to preserve such records or copies thereof in his office or place of business in the United States for a period of at least one year. Persons or corporations chartering or engaging or contracting for the use of vessels under such terms and conditions that they have full and exclusive control of the management and operating of such vessels shall be subject to the same requirement for preservation of records as are imposed upon owners of vessels by this section and in such cases the owners shall not be required to preserve such records.

(b) Any records required to be so preserved shall be produced to the Commandant of the Coast Guard upon his request therefor.

Libelants' Exhibit 10

SUBPART—DEFINITIONS OF WORDS AND TERMS CONTAINED WITHIN THE REGULATIONS IN THIS SUBCHAPTER

146.03–1 Deleted.

146.03–2 Deleted.

146.03–3 Bulk.—The word "Bulk" means substances which are loaded and carried on board a vessel without benefit of containers or wrappers, and received and delivered by the vessel carrier without mark or count: *Provided, however,* That this definition does not apply to initiating or priming explosives.

146.03–4 Deleted.

146.03–5 Cargo.—For the purposes of the regulations in this part "Cargo" is defined as any explosive or other dangerous article or substance, and combustible liquids, as defined within the regulations in this part, laden on board a vessel, with or without being confined within a container, for the purpose of transporting or storing such goods in the vessel.

146.03–6 CFC.—The initials "CFC" refer to Consolidated Freight Classification.

146.03–7 Character of vessel.—The term "Character of Vessel" means the type of service in which the vessel is engaged at the time of carriage of the explosives or other dangerous articles or substances subject to the regulations in this part, i. e., a cargo vessel, a passenger vessel, a ferry vessel, a railroad car ferry or a barge.

146.03–8 Dangerous articles defined.—A dangerous article within the meaning of the regulations in this sub-

chapter is an article falling within any of the following classifications:

Explosives.
Inflammable Liquids.
Inflammable Solids and Oxidizing Materials.
Corrosive Liquids.
Compressed Gases.
Poisons.
Hazardous Articles.
Ships' Stores and Supplies of a Dangerous Nature.

For definitions covering these classifications see the appropriate section within this subchapter. These are §§ 146.20-1—146.20-4; §§ 146.21-1—146.21-2; §§ 146.22-1—146.22-3; §§ 146.23-1—146.23-2; §§ 146.24-1—146.24-2; §§ 146.25-1—146.25-5; §§ 146.27-1—146.27-2; and §§ 147.02-1—147.02-2. Combustible Liquids are defined in §§ 146.26-1—146.26-2.

146.03-9 Deleted.

146.03-10 Explosive range.—The vapors of inflammable liquids (and to a lesser extent of combustible liquids) when mixed with air will in proper proportions form an explosive concentration. The low or "lean" limit and the high or "rich" limit vary in accordance with the characteristics of the liquid involved. The mixture or percent by volume between the "lean" and the "rich" mixtures is termed the "explosive range." Any percentage of the vapor in air between these limits will be likely, upon ignition, to continue to burn with rapidity and violence, sometimes with explosive effects.

146.03-11 Finely divided metals.—The phrase "Finely Divided Metals" is used to describe metals that have been divided into small parts such as aluminum powder, bronze powder, metal cuttings or borings such as are produced in working metals.

146.03-12 Finely divided organic material. — This phrase is used to describe organic material such as charcoal, peat moss, sugar, sulfur, sawdust, powderous mate-

rials such as flour, granular materials such as seeds, grains, and cereals, or like substances.

146.03–13 Fire point.—The term "Fire Point" denotes the temperature at which the vapors given off by the substance, if ignited, will continue to burn. The fire point is generally higher than the flash point, although occasionally they coincide as in the case of ether, carbon disulfide, and a few other substances.

146.03–14 Flashpoint.—The term "Flashpoint" means the temperature at which the substance gives off inflammable vapors which in contact with spark or flame will ignite.

146.03–15 Hermetically sealed.—The term "Hermetically sealed" means perfectly closed or closed airtight by, or as by, fusion, or crimping, so that no gas nor vapor can enter or escape.

146.03–16 Holds gas tight.—This term means that the structural boundaries of the hold are free of openings and constructed sufficiently tight to withstand a gas pressure not in excess of 1 pound per square inch. A hold that will withstand a hose test without leakage may be assumed as being gas tight. Cargo or other openings in the structural boundaries of such holds (except over deck cargo hatches) shall be provided with tight closing means. Cargo hatch openings in the over deck previded with hatch covers and tarpaulins are accepted as satisfactory closing means for such compartment or hold.

146.03–17 ICC.—The initials "ICC" refer to Interstate Commerce Commission.

146.03–18 ICC Regulations.—The term "ICC Regulations" when used in the regulations in this part refers to regulations of the Interstate Commerce Commission for the "Transportation of Explosives and Other Dangerous

Articles" in effect at the time a shipment is moving and subject to the regulations in this part.

146.03–19 Inside containers.—The following abbreviations when used in the tables indicate that the substance is packed in "Inside Containers" of the following descriptions:

"WIC" means With Inside Containers—which may be glass, earthenware, metal, or liners.
"WIL" means With Inside Liners.
"WIMC" means With Inside Metal Containers.
"WIML" means With Inside Metal Liners.
"WPL" means With Inside Paper Liners.

146.03–20 Label.—The term "Label" means the caution label required by the regulations in this subchapter and the regulations of the ICC to be affixed to outside containers of explosives or other dangerous articles or substances.

146.03–21 Marking.—The term "Marking" refers to the descriptive name, instructions, cautions, weight data, or specification marks that are required by the regulations in this subchapter and the regulations of the ICC to be placed upon outside containers of explosives or other dangerous articles or substances or combustible liquids.

146.03–22 Miscible.—For the purpose of the regulations in this part the term "Miscible" is applied only to liquids, and means such liquids are capable of mixing freely, in many cases in all proportions, with water.

146.03–23 Miscibility with water.—This term "Miscibility with Water" is shown in the regulations for the purpose of indicating the adaptability of water in volume in the event of ignition of the liquid.

146.03–24 Navigable waters.—Where used in the regulations in this part the term "Navigable Waters" includes the navigable waters of the United States, its territories

and possessions, but not the navigable waters of the Panama Canal Zone.

146.03-25 N. O. S.—The abbreviation "N. O. S." means not otherwise specified by name in the regulations in this part.

146.03-26 Not permitted.—The term "Not Permitted" means the dangerous articles or substances shall not be offered, placed on board, transported, or stored on a vessel subject to the regulations in this subchapter, when the term is specifically applied in the regulations in this subchapter to a particular substance or vessel.

146.03-27 Outside containers.—The term "Outside Containers" means the outer over-all container which is authorized by the regulations in this part to be used for the packing of the particular substance. As a rule they are specification containers, but in some instances nonspecification outside containers are authorized.

146.03-28 Prohibited.—The term "Prohibited" is applied to the Explosive Substances named and described in subsection (3) of R.S. 4472, as amended, and means such Explosive Substances shall not be offered to any vessel, placed on board, transported, or stored on board any vessel within the navigable waters of the United States.

146.03-29 Shipping papers.—For definition of "Shipping Papers" see §§ 146.05-12, 146.05-13 and 146.05-14.

146.03-30 Soluble.—For the purpose of the regulations in this part, the term "Soluble" means capable of being dissolved in water, forming homogeneous or uniform mixtures. (It is to be noted that some substances freely dissolve and others dissolve very slowly.)

146.03-31 STC.—The term "STC" means the barrel or drum is a "Single Trip Container."

Libelants' Exhibit 10

146.03–32 Storage.—The term "Storage" as used in the regulations in this part means the placing of explosives or other dangerous articles or substances on board a vessel for purposes of safekeeping or accumulation, pending removal therefrom in whole or in part at a subsequent time; the process of "placing on board" and "removing therefrom" occurring without movement of the vessel being involved.

146.03–33 Stowage.—For the purposes of the regulations in this subchapter, the term "Stowage" embraces the art of placing and securing goods on board a vessel within the holds of the vessel, or on the decks, in such manner as to enhance safety during the period of transportation.

146.03–34 Stowage terms defined.—For the purposes of the regulations in this part the following stowage terms are defined:

(a) *On deck in open* means the articles may be stowed on the open weather deck of a vessel. Such cargo may be protected from the elements if necessary or advisable.

(b) *On deck protected* means the articles may be stowed on the open weather deck of a vessel. It is required that dangerous cargo stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnaging.

(c) *On deck under cover* means the articles may be stowed on the weather deck of a vessel under covered erections, such as forecastle, bridge house, poop, and deck houses, having permanent structural openings to the atmosphere, but no structural openings such as doors, hatches, companionways, or manholes to any living quarters, cargo carrying, or other compartments, unless such

doors, hatches, companionways, or manholes are provided with hinged means for closing off and securing such openings. Stowage shall not be utilized in any deck house containing living quarters, a steering engine or refrigerating unit or refrigerated stowage boxes unless the areas occupied by such units are isolated from the stowage area by permanent and tight metallic division bulkheads.

(d) *Cargo hatch trunkway* means the articles may be stowed in a cargo hatch trunkway provided the trunk is constructed of steel without openings except such openings as are fitted with positive closing means: *Provided further,* That noncombustible hatch closing means, or combustible hatch covers metal lined all over, are fitted at the lower terminus of the trunk securely closing off the cargo hold from the trunkway. A cargo hatch trunkway the upper terminus of which is located in a tween deck space shall not be utilized for such stowage unless fitted with steel hatch covers and then only when such terminus is always visible and accessible during the voyage.

(e) *Tween decks readily accessible* means the articles may be stowed in upper cargo spaces below or off the weather deck, and so stowed as to be readily accessible from the cargo openings (but not in the square of the hatch if the latter is made up of wooden hatch covers) or in a shelter deck directly inboard of structural openings from the weather deck. A vessel having cargo carrying holds which extend from the tank top or lower flat to the weather deck and having no enclosed cargo stowage space imposed above such single holds may substitute "Under deck away from heat" in lieu of "Tween decks readily accessible" stowage.

(f) *Tween decks* means the articles may be stowed in an upper cargo space below or off the weather deck, or in a shelter deck space. Any openings in the bulkheads

forming boundaries of such Tween deck spaces shall be fitted with positive closing means. Hatches shall be provided with a full complement of covers. After stowage of cargo all openings shall be closed and remain closed during the voyage, except for such ingress and egress as is necessary in the operation of the vessel.

(g) *Under deck away from heat* means the articles may be stowed in a cargo space in a deep hold or a Tween Deck hold capable of being ventilated and not subject to heat from any artificial source. Holds of which any boundary bulkhead or deck forms part of the boundary of a boiler room, engine room, coal bunker, or galley shall not be utilized for this type of stowage unless the dangerous substances are stowed not less than twenty (20) feet away from such bulkheads: *Provided, however,* That this limitation shall not apply to cargo spaces in holds adjacent to the engine room of vessels fitted with internal combustion engines.

(h) *Under deck* means that the articles may be stowed in a cargo space in a deep hold or a Tween Deck hold capable of being ventilated. A hold is defined as an area allotted entirely to the carriage of cargo and is bounded by permanent steel bulkheads and decks, and the shell of the vessel, the deck openings being provided with means for effectively closing the hold against the weather, and in the case of superimposed holds, effectively closing off each hold. A cargo space or hold coming within the above definition shall not be used for the stowage of explosives (except fireworks or Relatively Safe Class C explosives) unless closed off to traffic while the vessel is on its voyage. A cargo space or hold containing a crew passage formed by battens or by a mesh or wire screen bulkhead shall not be used for stowage of other dangerous articles or substances, including fireworks and Relatively

Libelants' Exhibit 10

Safe Explosives—Class C, unless watchman service is provided for such areas.

(J) *Under deck but not overstowed* means the articles may be stowed in a cargo space in any hold as defined under (h), the characteristics of dangerous articles so stowed being such as to prevent the stowage of any other type of cargo over same.

(k) *Ferry stowage (AA)* means that a highway vehicle loaded with any permitted explosives or other dangerous articles or substances, or combustible liquids in conformity with all the applicable provisions of these regulations, may be transported on board a ferry vessel when stowed as directed by the vessel's representative. The vehicle need not be in a position to jettison but should be stowed as to be easily accessible.

(l) *Ferry stowage (BB)* means that a railroad vehicle loaded with any permitted explosives or other dangerous articles or substances or combustible liquids in conformity with all the applicable provisions of the regulations in this part, may be transported on board a railroad car ferry when stowed in a location away from sources of artificial heat. The vehicle need not be in position to jettison but should be easily accessible. Railroad car ferries accepting highway vehicles loaded with any permitted dangerous substances indicated as utilizing "Ferry Stowage (AA)" shall stow such vehicle away from sources of artificial heat and easily accessible.

146.03–35 Vapor density.—The term "Vapor Density" is the relative density of the vapor given off by an inflammable liquid as compared with air. A figure less than one (1) indicates a vapor lighter than air and a figure greater than one (1) indicates a vapor heavier than air.

146.03–36 Vessels defined.—For the purposes of the regulations in this subchapter passenger carrying vessels

or passenger vessels, barges and cargo vessels are defined as follows:

(a) *Passenger carrying vessels or passenger vessels.*—(1) A passenger carrying vessel or a passenger vessel is any vessel which carries passengers; provided that no vessel of the following classes shall be considered a passenger carrying vessel or a passenger vessel:

(i) Any vessel subject to any of the provisions of the International Convention for Safety of Life at Sea, 1929, which neither carries nor is authorized to carry more than twelve passengers.

(ii) Any cargo vessel documented under the laws of the United States and not subject to that Convention which neither carries nor is authorized to carry more than sixteen persons in addition to the crew.

(iii) Any cargo vessel of any foreign nation that extends reciprocal privileges and not subject to that Convention which neither carries nor is authorized to carry more than sixteen persons in addition to the crew.

(2) Any passenger vessel that is not designed and built to receive railroad vehicles shall be considered a passenger ferry if it is engaged in a ferry operation.

(3) Any passenger vessel that is designed and built to receive railroad vehicles shall be considered a railroad car ferry.

(b) *Barge.*—Any non self propelled vessel having no passengers on board, shall be considered a barge.

(c) *Cargo vessel.*—(1) Any vessel other than a passenger vessel or a barge shall be considered a cargo vessel.

(2) Any passenger ferry or railroad car ferry shall be considered a cargo vessel during any period it is being

operated under authority of a change of character certificate issued by the Officer in Charge, Marine Inspection.

146.03–37 Volatility.—The term "Volatility" is used to indicate the tendency of a liquid to assume the vapor state. The tendency of a liquid to evaporate is influenced by other factors than the vapor pressure. Increased volatility will result from the influence of a rise in temperature.

146.03–38 W. T.—The abbreviation "W. T." means Watertight.

SUBPART—LIST OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ARTICLES SUBJECT TO THE REGULATIONS IN THIS SUBCHAPTER

146.04–1 Proper shipping name.—The proper shipping name which shall be used and shown on bill of lading or other shipping paper and on outside of shipping containers where required by the regulations in this subchapter, appears in this list in roman type (not *italics*).

146.04–2 Dangerous articles not named.—Any article not properly described by a name shown in this commodity list when such article classifies under the definitions contained herein as a dangerous article shall be prepared and offered for shipment in compliance with the regulations in this part.

146.04–3 Classification.—This list shows the classification of each permitted article or substance. It also shows the articles or substances that are prohibited by the provisions of R. S. 4472, as amended, or that are not permitted by the regulations in this part, for transportation or storage on board vessels.

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146.04–4 Signs and abbreviations.—The meaning of the signs and abbreviations used in § 146.04-5 are as follows:

Asterisk (*) indicates the article may or may not come within the classification shown. If, in accordance with the definitions contained in this subchapter, the article does come within the classification it is subject to the regulations in this part.

Inf. L	Inflammable Liquid.
Inf. S	Inflammable Solid.
Oxy. M	Oxidizing Material.
Cor. L	Corrosive Liquid.
Inf. G	Inflammable Compressed Gas.
Noninf. G	Noninflammable Compressed Gas.
Pois. A	Poison Gas or Liquid, Class A.
Pois. B	Poisonous Liquid or Solid, Class B.
Pois. C	Tear Gas, Class C.
Expl. A	Class A Explosives.
Expl. B	Class B Explosives.
Expl. C	Class C Explosives.
Comb. L	Combustible Liquid.
Haz	Hazardous Article.
Prohibited	Means prohibited by R. S. 4472, as amended.
Not permitted	Means not permitted by the regulations in this subchapter.
No restrictions	Means this item is shown in the regulations only to distinguish it from articles under similar name that are classed as dangerous.

Libelants' Exhibit 10 (Continued)

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 45la is
on card 15.

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SUBPART—DETAILED REGULATIONS GOVERNING HAZARDOUS ARTICLES

146.27–1 Definition of hazardous articles.—Hazardous articles are defined by these regulations as set forth in § 146.27-2 and such definition is binding upon all shippers making shipments of hazardous articles by any vessel and shall apply to owners, charterers, agents, master or other person in charge of a vessel, and to other persons, transporting, carrying, conveying, storing, stowing or using hazardous articles on board vessels subject to R. S. 4472, as amended, and the provisions of the regulations in this subchapter.

146.27–2 Hazardous article.—For the purpose of the regulations in this part Hazardous Articles are defined as:

(a) Any article or substance (other than an explosive, inflammable liquid, inflammable solid, oxidizing material, corrosive liquid, compressed gas, poisonous article, or combustible liquid) which is liable when subjected to test for three continuous hours in a Mackey apparatus at or below a temperature of 212° F. to spontaneous heating in excess of 10° F. or which at or below a temperature of 300° F. may liberate vapor susceptible to ignition by spark or open flame.

(b) Any other article or substance which is specifically named in these regulations as hazardous.

146.27–3 Stowage on board vessels.—All hazardous articles permitted for transportation on board vessels shall, when taken on board a vessel, be stowed in accordance with the provisions applying to the particular character of vessel as shown in the tables forming § 146.27-100 and with the general stowage requirements shown herein.

Libelants' Exhibit 10

146.27–4 General stowage requirement.—Hazardous articles shall not be stowed in any compartment or hold in which explosives are stowed.

146.27–5 Liquids exempt.—Liquids which liberate vapor susceptible to ignition at a temperature above 150° F. and which possess no other characteristics which would classify such liquids as dangerous under any other definition in this subchapter, when packed in drums, barrels, or other closed containers and offered for transportation on board vessels as cargo, are not subject to the regulations in this part.

146.27–6 Protection for "on deck" stowage.—Hazardous articles that are permitted stowage "on deck in open" or "on deck protected" may be protected by the use of structural erections, awnings, or tarpaulins.

Libelants' Exhibit 10 (Continued)

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Note

Page 455a is on card 15.

Libelants' Exhibit 34A

DANGEROUS GOODS.

SECTION 94.

1. (a) For the purpose of the present Decree "explosive substances" shall mean explosives, propellants and charges and similar substances (with the exception of such materials as do not explode upon coming into contact with a flame and are not more sensitive to a knock, jerk or friction than dinitrobenzene), and articles containing one or more of these substances as components, such as:

(1) gunpowder (black powder, nitrate powder, meal powder, blasting powder);

(2) smokeless powder (gunpowder, nitroglycerine powder);

(3) explosive organic nitrates, such as nitroglycerine, nitrocellulose, pentaerythrite, tetranitrate (penthrite);

(4) mixtures of explosive organic nitrates and other explosive or non-explosive substances, such as dynamite and blasting gelatin;

(5) aromatic nitro compounds such as trinitrotoluene (trotyl), hexanitrodiphenylamine (hexyl), picric acid, tetranitromethylaniline (tetryl), trinitroresorcinol, trimethylene trinitroamine (hexogene), nitrated chlorohydrin;

(6) chlorate and perchlorate explosives;

(7) ammonium nitrate explosives;

(8) potassium nitrate explosives, such as calcinite;

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(9) primer explosives, such as fulminate of mercury and other fulminates, lead azide and other azides (with the exception of sodium azide), tetrazene;

(10) Ammunition, primers;

(11) Activators, such as safety fuses and safety time fuse igniters, with the exception of safety matches;

(12) Pyrotechnical toys, etc. such as confetti, bombs, Bengalese matches, sparklers, caps;

(13) Fireworks, such as fire crackers, pinwheels, fountains, rockets, flower pots;

(14) Objects fitted with igniter for developing irritating gases, such as tear gas igniters;

(b) Without prejudice to the provisions of the Act of 26th April 1884 (Government Gazette No. 81) and regulations issued in pursuance of the said Act, the explosive substances mentioned under (a) hereof must be stowed so that they can easily be jettisoned or flooded and they are as far as possible away from the living quarters of the ship, from the engine and boiler rooms, from bunkers and from places where work is regularly carried out and at least two metres from the ship's side. If carried below deck they must be stowed at least 3 metres away from the walls of the holds in which coal or other substances liable to self-heating or self-combustion are stowed.

If they are not stowed in a powder-room, they must be placed:

(1) in a hold separated by watertight bulkheads from all other parts of the vessel and from

other cargo, or separated by bulkheads or felt-woollen blankets from other goods;

(2) on deck away from other combustible or dangerous goods and not exposed to the direct rays of the sun.

(c) Primers and substances which can easily be exploded by a knock, jerk or by friction must always be stowed apart from other explosive substances.

(d) Explosive substances and substances mentioned in sub-sections 2 to 8 inclusive hereof may not be stowed in the same space.

(e) If explosive substances are carried in a space located immediately below the topmost deck, no substances mentioned in sub-sections 2 to 7 inclusive hereof may be stowed in the vicinity as deck-cargo.

2. Compressed gases, gases liquified under pressure, liquids boiling at very low temperatures and gases dissolved under pressure in liquids must be stowed so that the containers in which they are packed cannot be damaged by rolling or jerking.

The containers if stowed on deck may not be exposed to the direct rays of the sun. They must always be stowed at a safe distance from bulkheads or pipe lines which may be exposed to heating.

The containers and the degree to which they are filled must satisfy the requirements prescribed by section 19 of the Safety Act, 1934, or requirements which in the judgment of the Head of the Shipping Inspectorate are equivalent thereto.

For carriage in tropical or sub-tropical areas the

requirements as regards the containers and the degree to which they are filled shall be laid down in the book referred to in sub-section 13 hereof, subject to safety limits similar to those prescribed for the Netherlands by section 19 of the Safety Act, 1934, being observed.

The substances mentioned in this sub-section and substances mentioned in sub-sections 1, 6 and 8 may not be stowed in the same space.

3. (a) The carriage of the following combustible liquids shall be effected in conformity with the requirements laid down in schedule V: Hydrocarbons and liquid fuels having a flash point lower than or equal to 55° Celsius which are not miscible with water in every proportion. Liquid fuels shall be deemed to be liquids which are generally used to produce heat, light or propulsive power by combustion.

(b) Combustible liquids other than those mentioned under (a) hereof having a flash point lower than or equal to 55° Celsius must be carried in closed drums or in containers which where the safety aspect is concerned can be deemed to be equivalent thereto. The packaging must leave sufficient room for expansion of the liquid. These combustible liquids must be stowed at a safe distance from bulkheads or pipelines which may be exposed to heating.

Furthermore, they must:

(1) if they are miscible in every proportion with water and their flash point is lower than or equal to 21° Celsius, be stowed as deck cargo, if possible; they must not then be exposed to the direct rays of the sun.

(2) if they are not miscible with water in every proportion and their flash point is lower than or equal to 21° Celsius, they must be carried on deck. If this is not possible, then the carriage may be also be effected below deck upon conditions determined by the Head of the Shipping Inspectorate.

(c) The flash point of the liquids mentioned in this sub-section shall be determined at a barometric pressure of 760 millimetres by means of an Abel-Pensky apparatus.

(d) The substances mentio. ed in the present sub-section may not be stowed near substances mentioned in sub-sections 1, 5, 6 and 7 hereof.

4. Solid substances which are easily inflammable or which when heated to 70° Celsius may evolve combustible gases must be carried in gas-tight containers. These substances must be stowed at a safe distance from bulkheads and pipe-lines which may be exposed to heating.

If stowed on deck they may not be exposed to the direct rays of the sun.
The substances mentioned in the present sub-section and substances mentioned in sub-sections 1, 5, 6 and 7 may not be stowed in the same space.

5. Substances which as a result of absorption of moisture or of contact with water may evolve combustible gases must be packed in gas-tight and watertight containers.

The substances mentioned in this sub-section and the substances mentioned in sub-sections 1, 3, 4, 7 and 8 hereof may not be stowed in the same space.

6. (a) Substances which are liable to self-combustion as

a result of self-heating must be stowed at a safe distance from bulkheads and pipe-lines which may be exposed to heating. If they are not packed in gas-tight containers they must, if possible, be stowed so that they are at all times easily accessible and control is possible by checking the temperature of the cargo.

(b) Materials which upon simple contact with air are liable to ignite within a very short time must always be carried in suitable gas-tight containers and, in so far as they are stowed below deck, after permission has been obtained from and in conformity with directions to be given by the Head of the Shipping Inspectorate.

The substances mentioned in (a) and (b) of the present sub-section and substances mentioned in sub-sections 1, 2, 3, 4, 7 and 9 hereof may not be stowed in the same space.

7. Substances which are rich in oxygen and which in case of fire may keep the fire going and stimulate it by evolving oxygen must if stowed below deck be easily accessible and, if necessary, removable from the hold. These substances must be packed so that sifting out of the contents is effectively prevented.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-sections 1, 3, 4, 5 and 6 hereof, nor with "strong acids" coming under sub-section 8 hereof.

8. Corrosive and caustic liquids, and substances which through absorption of water or moisture from the air may turn into corrosive or caustic liquids, and substances which under normal con-

ditions may evolve corrosive vapours or fumes must be carried in sound gas-tight and water-tight containers which are not affected by the contents. If these substances be packed in glass or earthenware containers such containers must be enclosed in a metal, wooden or wicker wrapping. When carried below deck the substances must be placed on a layer of slaked lime or other material of sufficient thickness which, in case of breakage, neutralizes or absorbs the contents of the broken container.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-sections 1, 2 and 5 hereof, nor, so far as regards "strong acids", together with those mentioned in sub-sections 7, 9 and 10 hereof.

9. Poisonous, stupefying or irritating gases and substances which may directly or through the effects of water or moisture from the air evolve such gases must be carried in gas-tight containers.

If these substances be carried below deck they must be stowed in a space which is shut off by gas-tight bulkheads from other parts of the vessel and does not adjoin living quarters aboard the vessel. Such space must be well ventilated.

The substances mentioned in the present sub-section may not be stowed in the same space together with substances mentioned in sub-section 3 hereof, nor with "strong acids" coming under sub-section 8 hereof.

10. Solid poisonous substances which do not evolve vapours which are injurious to health, and poisonous liquids which do not evolve any perceptible

quantity of vapour, must be packed so that sifting out or flowing out of the contents cannot take place. They may not be stowed near substances intended for human or animal consumption.

The substances mentioned in this sub-section and "Strong acids" coming under sub-section 8 hereof may not be stowed in the same space.

11. (a) If, in view of the special dangers incidental to the carriage, he deems necessary, the Head of the Shipping Inspectorate may issue supplemental regulations respecting the stowage, the packaging and the quantity to be carried of substances mentioned in this section.

(b) Substances, the carriage whereof is from any cause attended with danger which even the manner of packaging and stowage is incapable of limiting, may, even though they cannot on the basis of their nature be classified under any of the preceding sub-sections of the present section, be excluded from conveyance by ship by the Head of the Shipping Inspectorate.

12. If a substance tendered for carriage can be classified under more than one sub-section of the present section, then the provisions of all the sub-sections concerned must be complied with. Before the loading of a substance coming under the present section is commenced, the loader shall give notice to the Master in due time of the carriage tendered and, if the loading is effected in this country, also to the District Head of the Shipping Inspectorate. In case of doubt concerning the degree of danger entailed by a substance, then in this country the District Head may demand a declaration from the loader with regard thereto and, if necessary, seek expert advice.

Libelants' Exhibit 34-A

13. The most common substances mentioned in the present section shall be listed in a book "Dangerous Cargoes" to be published on behalf of Our Minister, embodying further regulations concerning the manner of packaging and stowage which shall be taken into account in respect of carriage.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of section 94 of the Netherlands "Schepenbesluit" (Shipping Decree) in effect prior to 31st December 1952.

In testimony whereof I have hereunto set my hand this twenty-second day of August 1955.

P. L. Otte

Libelants' Exhibit 35

From the Berlitz Translation Service

Downtown Office: 179 Broadway, New York 7, N. Y.

COrtlandt 7-1112

INSPECTOR-GENERAL
OF SHIPPING
VD/ET

The Hague
Bankastraat 129

John Hudig & Son, Lloyd's Agents
Willemskade 23
Rotterdam

H 33—3681 July 30, 1954

Reference: SS. "Black Gull"

In reference to your letter No. 47631 Z B of July 23, I inform you that to my regret it is not possible to make

Libelants' Exhibit 35

a statement before the American Consul with regard to the regulations in force in this country relative to the transport of naphthalene.

I therefore will limit myself to confirming that at the time of the loading of the SS. "Black Gull", in July 1952 in the Netherlands, the following regulations were in force regarding the transportation of naphthalene:

> "Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the co...ents is completely obviated.
>
> Stowage may be on deck or under deck.
>
> On deck, the naphthalene must be protected from the effects of the sun's rays, and kept at a distance from the crew's quarters.
>
> Below deck in a well ventilated dry space.
>
> In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflamable gases, or substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene)."

INSPECTOR GENERAL FOR SHIPPING
per B. E. VAN BRUGGEN

Libelants' Exhibit 45A

B vM. 13th September 1952.
Maître P. H. Valentgoed,
Chief Inspector of Dock Labour,
25 Westerstraat,
ROTTERDAM

Dear Sir,

re: File J. H. & S. Miscellaneous ("Black Gull")

We have been asked by our American correspondents to inform them whether there are in force in the Netherlands any regulations respecting the carriage by sea of dangerous goods and, if so, whether such regulations also deal with the carriage of naphthalene. They refer to the "International Convention for the Safety of Life at Sea, 1929", this also having been subscribed to by the Netherlands and article 24, para. 3, whereof reads as follows:

> "Each Administration shall, from time to time by official notice, determine what goods are to be considered dangerous goods, and shall indicate the precautions which must be taken in the packing and stowage thereof."

The conference at which this Convention came into being passed, in addition, a resolution respecting dangerous goods, reading as follows:

> "5. Dangerous Goods.
>
> The International Conference on Safety of Life at Sea recommends that every possible effort should be made with a view to attaining an international agreement as to what goods should be considered as "dangerous goods" as mentioned in Article 24 of the present Convention and of fixing uniform rules for the packing and stowage of such goods."

Libelants' Exhibit 45A

For the purpose of carrying this Convention and Resolution into effect, regulations were made in America concerning the carriage of explosives and other dangerous goods. The official title of these Rules is "Regulations governing the transportation, storage, stowage or use of explosives or other dangerous articles or substances on board vessels". Under these regulations "Dangerous articles" are classed under different headings. Naphthalene comes under the heading "hazardous articles". Naphthalene is further described as follows:

> "White, crystalline, volatile flakes or powder with a strong coal tar odor. Readily ignited by sparks. Gives off heavy, dense smoke when burning and will add materially to a fire. Melting point about 175 F. Will evolve inflammable vapors at or below its melting point. Insoluble in water. Shipped in the form of flakes, balls, crushed, blocks, grains, tablets."

The regulations prescribe that naphthalene must be stowed well away from food, the crew's quarters and explosives.

Furthermore there are regulations for the packing of naphthalene.

Do you know whether there are any regulations in force in the Netherlands similar to those in America?

Thanking you in anticipation for your reply,

Yours truly,

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true

Libelants' Exhibit 45A

and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a carbon-copy of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3 D for identification August 11th, 1955 (initialled) 'EdB' ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. OTTE

Libelants' Exhibit 45B

"INSPECTIE VAN DEN HAVENARBEID"
(DOCK LABOUR INSPECTORATE)
1st District

Rotterdam(C')
25a Westerstraat.

Rotterdam(C'), 22nd September 1952.

No. 3385.

Reply to your letter of: 13th September 1952, B v.M.

To:

Maitre A. C. W. Beerman,
181 Schiedamschesingel,
ROTTERDAM

re: carriage of dangerous goods.

I herewith inform you that your letter of 13th September 1952 re: file J. H. & S. Miscellaneous ("Black Gull") has been forwarded to the Shipping Inspectorate, 2nd District, 4 Veerhaven, Rotterdam, for attention.

THE CHIEF INSPECTOR OF DOCK LABOUR
Head of the 1st District
for and on behalf of him:
(signed): undecipherable.

Libelants' Exhibit 45B

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3E for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August 1955.

P. L. OTTE

Libelants' Exhibit 45C

"SCHEEPVAART INSPECTIE"
(SHIPPING INSPECTORATE)

Office: INSPECTOR 2nd DISTRICT.

Rotterdam, 9.23.1952.
4 Veerhaven.

re: carriage of dangerous cargoes.

With reference to your letter B vM dated 9.13.52 addressed to the Chief Inspector of Dock Labour and passed on to me I have the honour to inform you that regulations are issued by the Shipping Inspectorate respecting the packing and stowage of the most common dangerous goods when carried by sea.

These regulations were embodied in Schedule XVII to the "Schepenbesluit" (Shipping Decree), which was cancelled in about 1939 and was to be replaced by a book "Dangerous

Cargoes" as mentioned in section 94, sub-section 13 of the Shipping Decree.

This book, although in course of preparation, has not appeared in print so far, and is not, therefore, in my possession.

The conditions as to packing and stowage are, however, known at the Inspector General's office. I have forwarded your letter to the Inspector General, requesting him to deal with the same as soon as possible.

The Inspector of Shipping in the
2nd District
(signed): undecipherable.

To:

Maitres Nolst Trenite, Beersma and Bergma,
181 Schiedamschesingel,
ROTTERDAM.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "BEERMAN Exhibit 3F for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. OTTE

Libelants' Exhibit 45D

"Inspectie Van Den Havenarbeid"
(Dock Labour Inspectorate)
1st District

Rotterdam, 7th October 1952.
No. 3564.

Further to my letter of 22nd September, 1952, No. 3385.

Rotterdam(C)
25a Westerstraat.

To:
Maître A. C. W. Beerman,
181 Schiedamsesingel,
Rotterdam

re: carriage of naphthalene.

Further to my above-mentioned letter I beg to inform you that according to a copy of a letter from the Inspector General of Shipping to the Inspector of that Service at Rotterdam received by me, the following conditions apply with respect to the carriage of naphthalene:

Naphthalene must be packed in closely woven bags, wooden or steel barrels, drums or boxes which must be closed so that sifting out of the contents is adequately prevented.

The stowage may be on or under deck. On deck naphthalene must be protected against the effects of the sun's rays and must be kept away from the crew's quarters.

Under deck in a well-ventilated, dry space. In neither case may naphthalene be stowed together with explosives, compressed gases, substances which together with moisture give off combustible gases, substances liable to self-heating or self-combustion or substances attracting oxygen and

Libelants' Exhibit 45D

they must also be kept away from food and other articles for human consumption and bituminous paints (the latter may start dripping under the influence of naphthalene).

The Chief Inspector of Dock Labour
Head of the 1st District
(signed): J. H. Valentgoed.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twelfth day of August one thousand nine hundred and fifty-five of a letter submitted to me for translation, the said document being marked "Beerman Exhibit 3G for identification August 11th, 1955, (initialled) "EdB" ".

In testimony whereof I have hereunto set my hand this twelfth day of August, 1955.

P. L. Otte

Libelants' Exhibit 45E

From the BERLITZ TRANSLATION SERVICE
Downtown Office: 179 Broadway, New York 7, N. Y.

COrtlandt 7-1112

Rotterdam, July 23, 1954

JOHN HUDIG & SON COPY
47631

INSPECTOR-GENERAL OF SHIPPING
THE HAGUE.

Sir,

S. S. "BLACK GULL"

We represent American lawyers, who upon the instructions of the cargo insurers, are bringing action against the owners of the above named ship. On July 18, 1952, fire broke out on board a short distance from New York as a result of which the ship and cargo were virtually a total loss. At the inquiry held thereafter, it was shown that the fire broke out in bales of naphthalene, which were stowed on deck and not removed (covered). Part of the naphthalene was loaded in Rotterdam.

At the request of these attorneys we instructed Mr. A. C. W. Beerman to proceed with an investigation according to the regulations in force in July 1952, with regard to the loading and stowage of naphthalene in sacks and we received among others, a letter from the Department of Inspection of Dock-Work, dated October 7, 1952 which states:

"In continuation of my letter quoted above, I inform you

Libelants' Exhibit 45E

that according to a copy I have received of a communication from the Inspector General of Shipping to the Inspector of this Service in Rotterdam, the following conditions apply to the packing and transport of naphthalene:

> "Naphthalene must be packed in closely woven sacks, in wood, or in iron barrels or cases, which are closed in such a manner that any escape of the contents is completely obviated.
>
> Stowage may be on deck or under deck.
>
> On deck, the naphthalene must be protected from the effects of the sun's rays, and kept at a distance from the crew's quarters.
>
> Below deck in a well ventilated dry space.
>
> In both cases naphthalene should not be stored with explosives, compressed gases, substances which when damp give off inflammable gases, on substances subject to heating or spontaneous combustion, oxygen containers; also it must be kept away from foodstuffs and rich and bitumenous paints (the latter can leak under influence of naphthalene)."

Today a representative of the American attorneys called on us and requested us to address ourselves to you again in this matter.

He asks whether it is possible through you, or someone in your name that a statement to be made in the presence of an American Consul in which are indicated the above mentioned conditions in force in July 1952, for packing, transporting and stowing of naphthalene, the purpose of which

Libelants' Exhibit 45E

is that the name and office of the person who makes the statement in the document would be mentioned and said document would be certified by the Consul.

Any expense attached may be charged to our account.

Thanking you in anticipation for all the cooperation which you can give etc.

JOHN HUDIG & SON

Exact Copy.
Rotterdam, August 10, 1955.

Respondents' Exhibit 3

Plan of "Black Gull" stowage of deck cargo.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Note

Page 475a-2 is large
plan on Card 18

Petitioners' Exhibit O

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit O

Alfred H. Miller Co., Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

S. S. Black Falcon
Febuary 2, 1956

Petitioners' Exhibit P

Photograph.

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Petitioners' Exhibit P

Alfred H. Miller Co. Inc.
25 WILLIAM STREET · NEW YORK 5, N. Y.

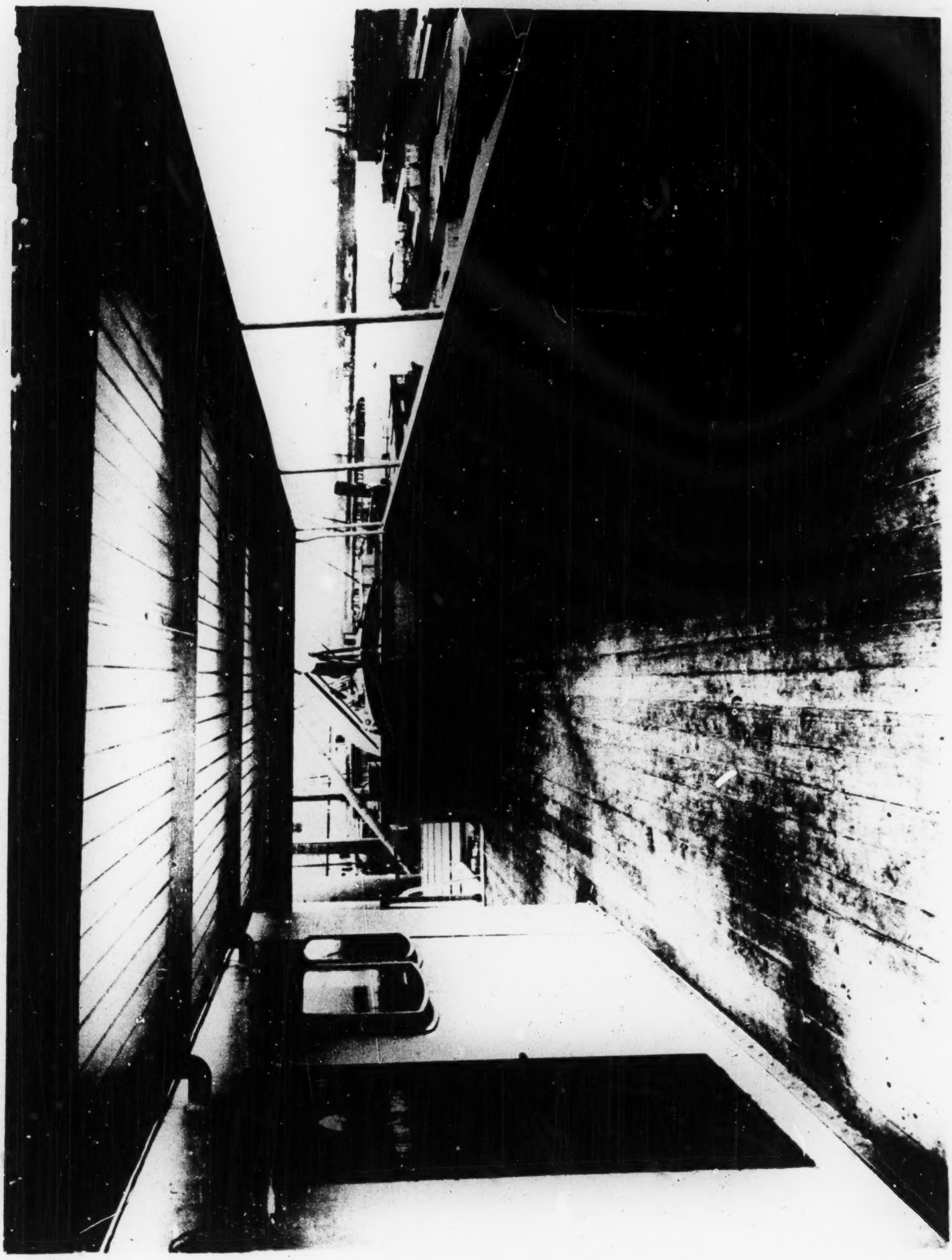
S. S. Black Falcon
Febuary 3, 1956

Petitioners' Exhibit Q

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit Q



Alfred H. Miller Co., Inc.
2. WILLIAM STREET - NEW YORK 5, N. Y.

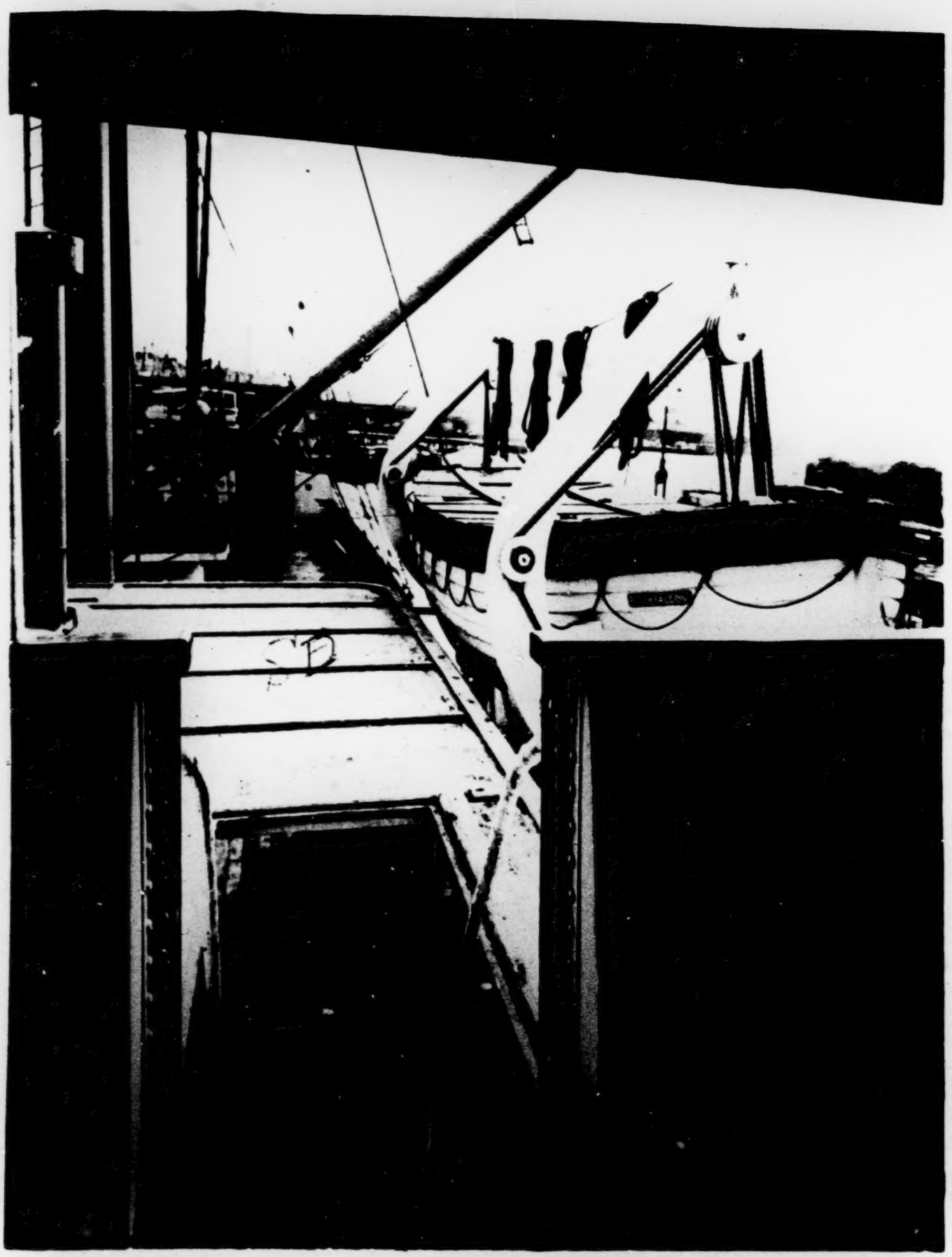
S. S. Black
Febuary 2, 1.

Petitioners' Exhibit R

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit R



Alfred A. Miller Co. Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

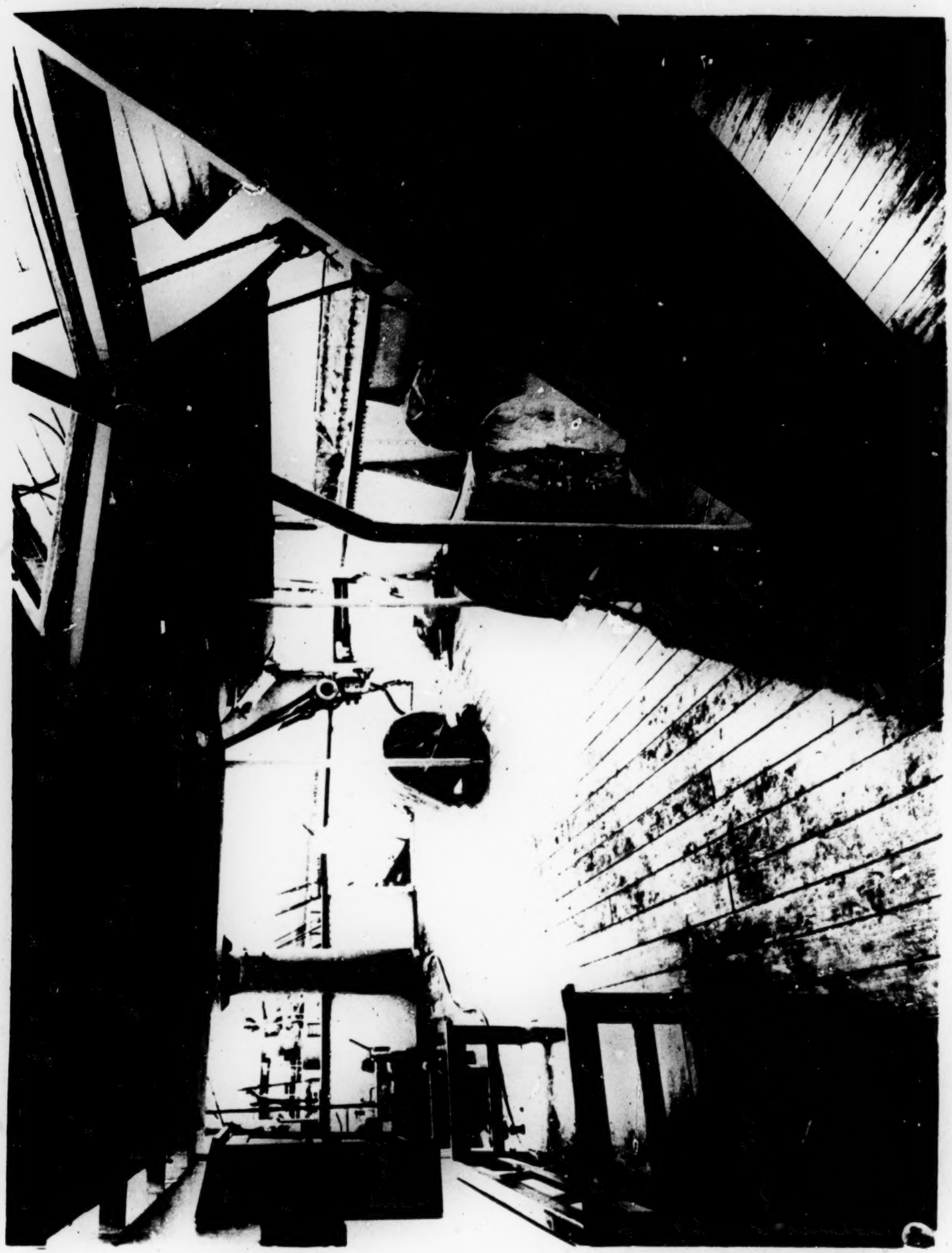
S. S. Black Falcon
Febuary 3, 1956

Petitioners' Exhibit S

Photograph.

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Petitioners' Exhibit S



Alfred H. Miller Co. Inc.
23 WILLIAM STREET · NEW YORK 5, N. Y.

S. S. Black Falcon
Febuary 7, 1956

Petitioners' Exhibit T

Cardboard diagram of stow.

(PHOTOPRINT)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

TOPP AV STUASJEN
top of stuvage

FORKANT
front

FUG

FUG (2)

STUASJEN SETT FRA INNSIDEN stowage seen from the inside

GANGVEI
Gangway

B.B. LUKEKARM Nº 4
P/H Coaming H.C.

& Flanging Weld

TOPP. Nº 4 LUKE
Top H.C. hatch

Petitioners' Exhibit T
(p. 487e)

Petitioners' Exhibit W

SHIPPING INSPECTORATE
Bureau
Inspector 2nd District

Rotterdam, 3rd May 1954.
4 Veerhaven.

No. 1780

re: carriage of naphthalene.

In reply to your request regarding carriage of naphthalene, I beg to inform you on behalf of the Inspector General that the advice of the Chemical Adviser to the Labour Inspectorate has been sought, and he has given the following information:

"Naphthalene is a hydrocarbon obtained from certain coal tar distillates by crystallization. Pure naphthalene melts at 80°C and boils at 218°C. Although its boiling-point is high, naphthalene is more or less volatile even at lower temperatures (even below melting point) and may, therefore, generate inflammable vapours if only slightly heated. Perhaps this is one of the reasons why this substance easily ignites. Apart from pure naphthalene, there are products marketed under the same name which contain residues of the tar oil from which they have been crystallized. It is conceivable, even if improbable, that these impurities are more volatile than naphthalene. This might be an argument for not covering naphthalene loaded on deck in accordance with Messrs. van Nievelt Goudriaan's views. On the other hand, the impurities are liquids, and during prolonged transport may be absorbed by the fabric of the bags, making them more inflammable. Naturally, covering will diminish the risk of ignition from outside. A third possibilty is that of impure naphthalene containing substances liable to self-heating. In that case

Petitioners' Exhibit W

(for which, however, I have not been able to find any indications in the literature) covering would again have an adverse effect.

As to the cause of the fire on board m. v. "Black Gull", I can form no opinion. I incline to the view that ignition from outside is the greatest danger during carriage of naphthalene, so that in case of carriage on deck it is better to cover the cargo."

I am enclosing a copy of the regulations concerning naphthalene included in the handbook "dangerous cargoes" which is going to be published.

The Shipping Inspector
2nd District
(signed): J. VISSER

To:

N. V. van Nievelt Goudriaan en Co.,
ROTTERDAM.

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of a photostat copy of a letter submitted to me for translation.

In testimony whereof I have hereunto set my hand this twenty-second day of August, 1955.

P. L. OTTE

Petitioners' Exhibit W

SHIPPING INSPECTORATE
Bureau

Inspector 2nd District

Rotterdam, 3rd May 1954.
4 Veerhaven.

NAPHTHALENE.

properties: solid, crystals, flakes or powder, inflammable, strong smell, volatile.

bituminous paints may start dripping under the influence of naphthalene fumes and thus damage cargo.

comes under section 99, sub-section 7(c), of the Shipping Decree, 1952.

packing: close-woven bags, barrels, drums, wooden or steel boxes closed so that contents are effectively prevented from sifting out.

stowage: on deck protected from the sun's rays; or below deck in a well-ventilated, dry hold, in a cool place. In neither case together with explosives or compressed or liquefied gases, or material which, together with moisture, generate inflammable gases, or are liable to self-heating or self-combustion, or oxygen carriers, nor near foods or other articles for human consumption or bituminous paints or crews' quarters.

particulars: if powdered naphthalene is transported, the container should be closed very well because naphthalene dust-clouds in the air may cause explosions.

Open fires and smoking near a cargo of naphthalene must be prohibited.

Petitioners' Exhibit W

I, Pieter Laurens Otte, sworn translator for the English language, residing at No. 25b Madeliefstraat, Rotterdam, do solemnly and sincerely declare that I well understand the English language, and that the above is a full true and faithful translation made by me on the twenty-second day of August one thousand nine hundred and fifty-five of the enclosure referred to in the letter dated 3rd May 1954 from the Inspector of Shipping 2nd District to N. V. van Nievelt Goudriaan en Co. of Rotterdam, a photostat copy whereof was also translated by me this day.

In testimony whereof I have hereunto set my hand this twenty-second day of August, 1955.

P. L. Otte

Memorandum of Dimock, *D. J.*

#328

(2565)

[SAME TITLE.]

(2566)

Memorandum

Dimock, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Memorandum of Dimock, D. J.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs

and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered. (2567)

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire, it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only. Libellants

~~Passenger claimants~~ allege that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Memorandum of Dimock, D. J.

Here, there are two possible causes of the fire. Passenger-~~claimants~~ libelants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The fire was first discovered in the middle of the top of the stow and on the side (2568) of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first discovered. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating

resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelant would be barred from recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool (2569) before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

Memorandum of Dimock, D. J.

So far as evidence is concerned claimants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that claimants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this: The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial

quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

(2570)

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Cargo libelants, on page 30 of their post-trial brief, allege that crude naphthalene permeates tarpaulins. Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that

there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any faliure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believed that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

(2571)

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that the port lifeboat should have been lowered as soon as the severity of the fire was discovered in order to prevent its destruction. In addition, they complain of the fact that after they were ordered into the starboard lifeboat, it was keep moored to the "Black Gull". The

line became slack and the lifeboat drifted aft to the area where the fire was raging. The cause of this is unexplained but no charge of negligence is made with respect to the slackening of the mooring. The passengers allege that they were, as a result of being thus moored to the ship, scorched and forced into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat moored to the burning vessel at the risk of some scorching of the passengers.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. It would have been unthinkable for him to have ordered the starboard lifeboat away from the burning vessel for the sole purpose of saving the passengers from some scorching when no other means for rescuing the crew fight the fire was available. I cannot say from where I sit that it would have been possible to keep the

(Rep. 475a-2)

CLASS.
DET NORSKE VERITAS + I.A.I. WITH FREEBOARD.

MAIN MACHINERY.
ONE GÖTAVERKEN DIESELMOTOR TYPE DM 158 V.G.9. CYL.9. 2 CYCLE, SINGLE ACTING, DIRECT REVERSIBLE, WITH SOLID INJECTION, TOTAL OUTPUT 6500 B.H.P. AT 118 R.P.M.

AUX. MACHINERY.
THREE GÖTAVERKEN DIESELGENERATORS TYP G.S. CYL.5. 4 CYCLE, SINGLE ACTING, EACH OF 300 B.H.P. AND 200 K.W. AT 350 R.P.M. ONE LISTER DIESELGENERATOR TYPE 3.2TM. CYL.3. 4 CYCLE SINGLE ACTING OF 94 B.H.P. AND 15 K.W. AT 1200 R.P.M.

FIRE EXTINGUISHING.
CO_2 FIRE EXTINGUISHING TO ALL HOLDS AND TWEENDECKS.

REFR. PLANT FOR CARGO.
OF FREON-TYPE 2 COMPRESSORS.
DELIVERED BY MESSRS. L. STERNE & CO. LTD. GLASGOW.

TONNAGE.

	NORWEGIAN	SWEDISH	PANAMA	SUEZ
GROSS TONNAGE	5000.81	6035.47	7294.10	7292.07
NET. "	2954.65	4018.60	5245.44	5215.02
UNDER DECK	4171.87	4126.61	4171.87	4119.31

CARGO CAPACITIES.

COMPARTMENT.	GRAIN CUB. MET.	GRAIN CUB. FEET	BALES CUB. MET.	BALES CUB. FEET
*1 HOLD	3386	119540	3404	120180
*2 "	1440	50860	1322	46670
*3 "	2374	84150	2333	82370
*4 "	1775	62670	1546	54590
TOTAL UNDER DECK	8123	287150	8320	293770
*1 TWEENDECK	878	34530	876	30950
*2 "	861	33590	876	31050
STRONGROOM	104	3650	88	3080
*3 TWEENDECK	387	13620	354	12490
*4 "	1153	40980	1032	36450
STRONGROOM	148	5250	131	4640
*5 TWEENDECK	1160	40980	1063	37550
AFT WELL	87	3080	77	2700
TOTAL TWEENDECK	4981	176780	4505	159420
*3 TWEENDK STORES (DEEP SPACE)	235	8300	235	8300
*5 " PORT "	235	8300	235	8300
TOTAL REFRIGERATED CARGO	470	16600	470	16600
TOTAL HOLD AND TWDK SPACES	13574	479530	13295	469790
*1 DEEPTANK STARB.	219	7730	196.8	6955
*1 " PORT	219	7730	196.8	6955
*2 " STARB.	256	9050	227.8	8039
*2 " PORT	256	9050	227.8	8039
TOTAL CARGO TANKS	950	33560	848	29940
TOTAL CARGO SPACE	14524	513090	14143	499730

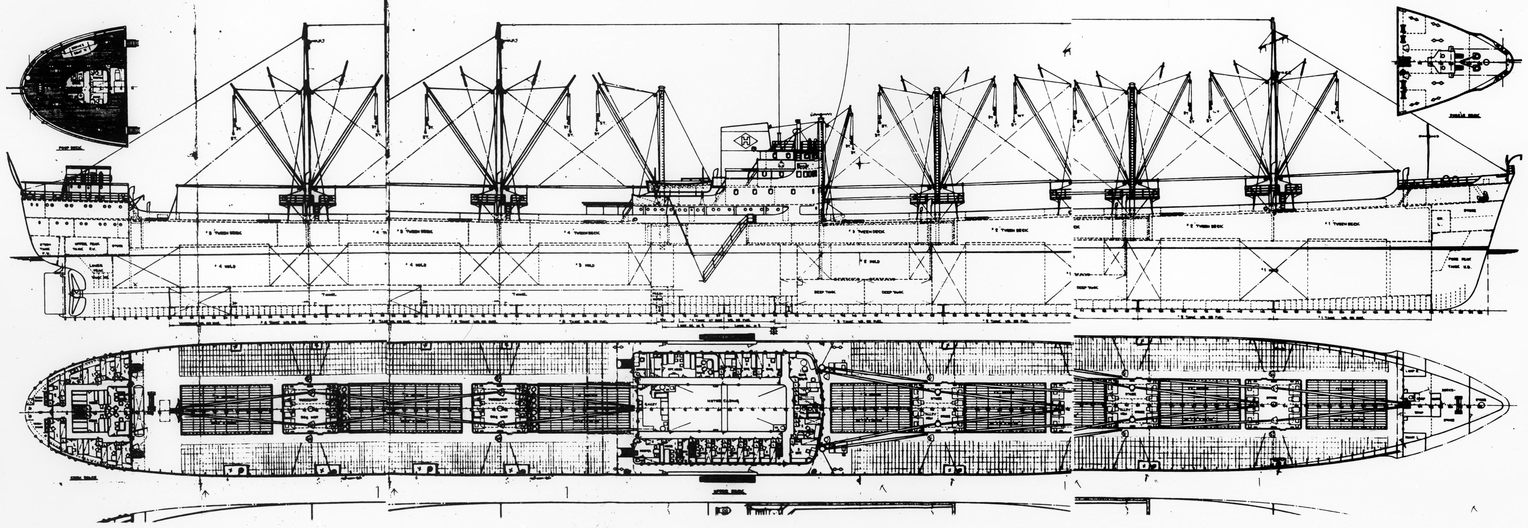
OIL BUNKERS, FRESH WATER AND WATER BALLAST CAPACITIES.

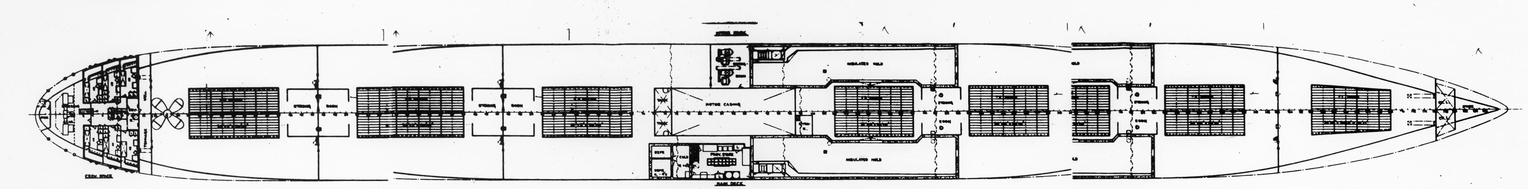
COMPARTMENT.	FRESH WATER SPEC. GRAV. 1.000 TONS	FRESH WATER SPEC. GRAV. 1.000 CUB. FEET	WATER BALLAST SPEC. GRAV. 1.025 TONS	WATER BALLAST SPEC. GRAV. 1.025 CUB. FEET	FUEL OIL SPEC. GRAV. 0.95 TONS	FUEL OIL SPEC. GRAV. 0.95 CUB. FEET
DOUBLE BOTTOM.						
*1 TANK			1214	1244	1058	
*2 " STARB.			982	1007	883	
*2 " PORT.			982	1007	883	
*3 " STARB.			1578	1617	1428	
*3 " PORT.			1578	1617	1428	
*4 " STARB.			1578	1617	1428	
*4 " PORT.			1578	1617	1428	
*5 " STARB.			1157	1186	1041	
*5 " PORT.			1157	1186	1041	
*6 " STARB.			423	433	381	
*6 " PORT.			423	433	381	
WING TANK STARB.			532	545	479	
" PORT			624	545	564	
LUBRICATING OIL TANK FRAME 88-96					243	
" " " " 74-83					243	
FRESH WATER TANK (CIRC.) " 117-122	117					
" " " " 109-113	77					
" " " " UPPER " 109-113	315					
" " " " 96-101	234					
TOTAL IN DOUBLE BOTTOM	1380.1	14145			1245.3	
FORE PEAK TANK	87.0	84.0				
AFTER "	70.0	71.7				
F.W. TANK AFT. FRAME 10-8	58.0					
STERN TANK F.W.	33.6					
TOTAL BALLAST CAPACITY		1575.4				
" BUNKER "						1245.3
*1 DEEPTANK STARB.	231.8	237.6			208.6	
*1 " PORT.	231.8	237.6			208.6	
*2 " STARB.	254.6	276.3			241.6	
*2 " PORT.	254.6	276.3			241.6	
TOTAL CARGO TANKS	1002.8	1078			952.4	

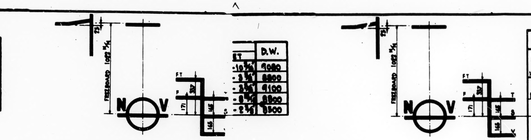
BALE CAPACITIES ARE TAKEN TO INSIDE OF PLATING AND TO UNDERSIDE OF BEAMS.
GRAIN " " " " OUTSIDE " FRAMES " " TOP " "
THESE PARTICULARS ARE BELIEVED TO BE CORRECT BUT ARE NOT GUARANTEED.

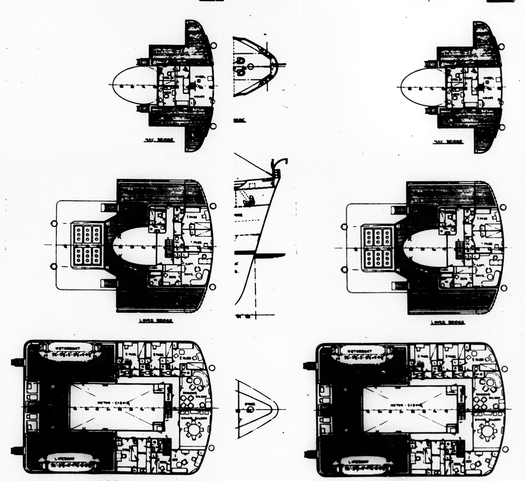
PLATING AND TO UNDERSIDE OF BEAMS.
FRAMES " " TOP " "
RECT BUT ARE NOT GUARANTEED.

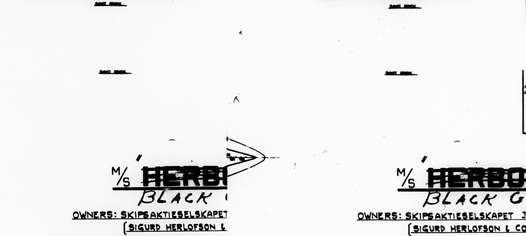
INT. LOAD LINE FREEBOARD	DRAFT METRES	DRAFT FEET	D.W.
TROPICAL FRESH WATER	8'-5"	8188	26'-10⅝"	6080
SUMMER FRESH WATER	8'-4½"	8017	26'-3⅝"	5800
TROPICAL SALT WATER	8'-4½"	8011	26'-3⅜"	6100
SUMMER SALT WATER	8'-2¼"	7846	25'-8⅝"	5800
WINTER SALT WATER	8'-0½"	7681	25'-2⅛"	5500

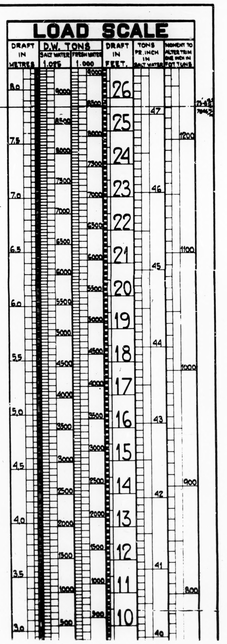












SCALE

M/S 'HERBI
BLACK
OWNERS: SKIPSAKTIESELSKAPET
[SIGURD HERLOFSON &
BUILT BY: ØRESUNDSVARVET AB.
1948.

LENGTH OVER ALL		
LENGTH BETW. P.P.		
BREADTH MOULDED		
DEPTH ---- TO SECOND DK		
DEPTH --- TO UPPER DK		
DRAFT ON SUMMERFREEBOARD		

M/S 'HERBORG'
BLACK GULL
OWNERS: SKIPSAKTIESELSKAPET JOLUND, OSLO.
[SIGURD HERLOFSON & CO. A/S]
BUILT BY: ØRESUNDSVARVET AB, LANDSKRONA, SWEDEN.
1948.

LENGTH OVER ALL	458'-5"	139.73 M
LENGTH BETW. P.P.	430'-0"	131.06 "
BREADTH MOULDED	57'-0"	17.37 "
DEPTH ---- TO SECOND DK	29'-0"	8.84 "
DEPTH --- TO UPPER DK	38'-0"	11.58 "
DRAFT ON SUMMERFREEBOARD	29'-8¾"	7.85 "

0-093-009

lifeboat at a spot far enough away for the passengers' comfort but near enough for the crews' safety.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: May 16 1956

E. J. DIMOCK
United States District Judge.

Amended Memorandum of Dimock, *D. J.*

#362

(2583)

[SAME TITLE]

(2584)

AMENDED MEMORANDUM

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Amended Memorandum of Dimock, D. J.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libelants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out

from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew (2585) could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire, it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the

physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices (2586) remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward: rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Amended Memorandum of Dimock, D. J.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

(2587)

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign

impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this

failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this: The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F, the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin (2588) would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stowed on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated re-

placement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

(2589)

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on

its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that the port lifeboat should have been lowered as soon as the severity of the fire was discovered in order to prevent its destruction. In addition, they complain of the fact that after they were ordered into the starboard lifeboat, it was kept moored to the "Black Gull". The line became slack and the lifeboat drifted aft to the area where the fire was raging. The cause of this is unexplained but no charge of negligence is made with respect to the slackening of the mooring. The passengers allege that they were, as a result of being thus moored to the ship, scorched and forced into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerour situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat moored to the burning vessel at the risk of some scorching of the passengers.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the

fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. It would have been unthinkable for him to have ordered the starboard lifeboat away from the burning vessel for the sole purpose of saving the passengers from some scorching when no other means for rescuing the crew fighting the fire was available. I cannot say from where I sit that it would have been (2590) possible to keep the lifeboat at a spot far enough away for the passengers' comfort but near enough for the crews' safety.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: July 13, 1956

E. J. Dimock
United States District Judge

Second Amended Memorandum of Dimock, *D. J.*

#366

[SAME TITLE]

(2591)

APPEARANCES:

PYNE, BRUSH, SMITH & MICHELESEN, ESQS.,
Proctors for Skibs A/S Jolund;
Warner Pyne, Esq., and
Dudley C. Smith, Esq., of Counsel.

BIGHAM, ENGLAR, JONES & HOUSTON, ESQS.,
Proctors for libelants, cargo claimants and death claimant;
Henry N. Longley, Esq., and
John W. R. Zisgen, Esq., of Counsel.

THOMAS H. WALKER, ESQ.,
Proctor for Claimant;
William J. O'Brien, Esq., of Counsel.

ABBERLEY, KOOIMAN & AMON, ESQS.,
Proctors for seven passenger claimants;
John J. Abberley, Esq., and
Frank Marcellino, Esq., of Counsel.

DOW & SYMMERS, ESQS.,
Proctors for Black Diamond Steamship Corp., respondent and claimant;
Daniel W. Stonebridge, Esq., and
Raymond W. Mitchell, Esq., of Counsel.

BARRON, RICE & ROCKMORE, ESQS.,
Proctors for Werner S. Brunn, Claimant;
Jerome L. Reinstein, Esq., of Counsel.

Second Amended Memorandum of Dimock, D. J.

(2592)

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V "Black Gull", on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the "Black Gull". The second and third cases are suits for non-delivery of and damage to the cargo which was on board the "Black Gull" at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the "Black Gull" and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libellants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of

crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. (2593) The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantuncket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a

high of 77° F to a low of 61° F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices (2594) remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous combustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the

stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that without definitely knowing that no impurities were present in the bags on the "Black Gull", spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to turn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from

recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) if the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

(2595)

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship

could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F, the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin (2596) would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both

Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

Second Amended Memorandum of Dimock, D. J.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation. (2597)

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the "Black Gull" did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that as soon as the severity of the fire was discovered the port lifeboat should have been lowered in order to prevent its destruction. In addition, they claim that the starboard lifeboat, after they were in it, was kept moored to the "Black Gull" and that this resulted in scorching which in turn forced them into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat close to the burning vessel.

As a matter of fact it was not proved that keeping the lifeboat moored to the vessel resulted in the scorching and submersion. The starboard lifeboat, with the passengers in it, was let down from its davits on the midships building. It was then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side and the boat was shipping water. At the same time water from the fire hoses was running through the scuppers on deck down into the boat. The second officer, who was in the boat, cut the painter which moored the boat to the vessel and the members of the crew in the boat tried to get the boat clear of the ship's side. The ship had headway, however, and they were unable to get the boat far enough from it before the boat got abreast of the fire at number 4 hatch to avoid the scorching of the heat. The second officer therefore ordered all to go overboard on the lee side of the boat and hang onto the lifeline. After the boat passed number 4 hatch they all got into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew (2598) thereafter jumped overboard from the ship and were picked up. Then all the rest of the crew, except the four who lost their lives, came aboard from the vessel. All in the boat were rescued by the Gripsholm.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. Since the boat had to be kept available

it was natural to keep it moored until it appeared that the sea against the side of the vessel and the water from the scuppers were filling it. There is no suggestion that the cutting of the painter was negligent or that the failure to get far enough from the ship to avoid scorching as the boat passed number 4 hatch was negligent. Since passenger libellants' criticism is that the boat was kept moored, their position must be that it was negligent to moor the boat to the ship until it appeared that the boat was in danger of filling instead of trying to get clear of the ship as soon as the boat was in the water. There is, however, no reason to believe that, if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. No attempt was made to show that the fire was any hotter when the boat finally passed it than when the boat was first launched.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: July 23, 1956

E. J. DIMOCK
United States District Judge

Findings of Fact and Conclusions of Law

(2647)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

[After the Court had filed its opinion in the above entitled causes, proposed findings of fact and conclusions of law were submitted by proctors for libellants and cargo claimants and death claimants Verbeeck, et al., by passenger claimants, by petitioner and by respondent. The Court indicated its disposition of each proposed finding by a marginal notation. The following are all of the findings of fact and conclusions of law made by the Court, with parenthetical references showing from which set of proposed findings and conclusions each was taken.]

FINDINGS OF FACT

1. The motor vessel "Black Gull" left Rotterdam, Netherlands, July 10, 1952, bound for United States east coast ports, the first of which was to be New York. (Lib. F.F. 1; Pet. F.F. 1; Res. F.F. 1)

2. The "Black Gull" was owned by Skibs A/S Jolund, a Norwegian corporation, and was of Norwegian Registry. (Lib. F.F. 2; Pet. F.F. 2)

Her owner was not an active ship operator; and the entire management of the ship was entrusted by the owner to Sigurd Herlofsen & Co., which executed the charter hereinafter mentioned. (Lib. F.F. 2)

Findings of Fact and Conclusions of Law

3. The "Black Gull" on the voyage in question was under time charter to Black Diamond Steamship Corp., a Maryland corporation, with an office and place of business in the City of New York. This charter was for a period of ten years, was dated September 3rd, 1949, and included, among other provisions, that "the whole reach of the Vessel's Hold, Decks, and usual places of loading" were "at the charterer's disposal"; that the vessel was to have a "full (2649) complement of officers, seamen, engineers and fireman", supplied and paid by the owners; that the cargo was to be "laden and/or discharged on any dock or at any wharf that the charterers or their Agents may direct"; that "the Captain (although appointed by the Owners) shall be under the orders and directions of the charterers as regards employment and agency"; and "the charterers are to load, stow and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for the cargo as presented". (Lib. F.F. 3; Pet. F.F. 3)

4. On the voyage leaving Rotterdam July 10, 1952, the "Black Gull" carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp, and Rotterdam (Lib. F.F. 4; Pet. F.F. 4; Res. F.F. 1) and on the weather deck she carried approximately 550 tons of crude naphthalene (Lib. F.F. 4; Pet. F.F. 4; Res. F.F. 2) which had been loaded at Antwerp and Rotterdam (Lib. F.F. 4; Pet. F.F. 7; Res. F.F. 2)

5. The naphthalene cargo was in burlap or jute bags. The bags had previously been used. (Lib. F.F. 5; Pet. F.F. 6; Res. F.F. 2)

6. The bags of naphthalene were loaded on to the "Black Gull" at Antwerp and Rotterdam by the charterer under and pursuant to the terms of the charter. (Lib. F.F. 6; Pet. F.F. 7)

7. The bags of crude naphthalene were stowed both forward and aft of the midship house on both the port and starboard sides of the weather deck. Aft on each side the stow was six bags, about 6 feet in height above the deck, 90 (2650) feet long, and about 13 to 16 feet in width; and extended from the bulwarks or side rails to about 3 feet from the hatch coamings. The stow forward was approximately the same. A fence of dunnage boards kept this stow of bagged naphthalene clear of the bulwarks and kept clear, for access by the crew, the places along the deck near the bulwarks where sounding pipes and hose connections were located. The space of about 3 feet between the inboard sides of the stow of bagged naphthalene and the hatch coamings left a fore-and-aft passageway for members of the crew. (Lib. F.F. 7; Pet. F.F. 8; Res. F.F. 3 and 4)

8. The stow of bagged naphthalene was secured in place by manila rope nets but was not otherwise covered, (Lib. F.F. 8; Pet. F.F. 9; Res. F.F. 5) and was solid or compact with no crevices or openings between the bags on top or sides. (Pet. F.F. 9)

9. The "Black Gull" on this voyage had a full complement of officers and men, (Lib. F.F. 9; Pet. F.F. 5) and in fact carried a larger complement than was required under Norwegian law. (Pet. F.F. 5) She was manned by a crew of 40 and carried 9 passengers. (Res. F.F. 6; Lib. F.F. 34)

10. On July 18, 1952 at 7:24 o'clock P. M. the "Black Gull" passed 8 miles south of Nantucket Shoals Lightship. (Lib. F.F. 10; Pet. F.F. 10)

11. At about 11:00 o'clock P. M. on the evening of July 18, 1952, the third officer, Nils Valen, who was on watch on the starboard wing of the bridge heard a sound

which he described as a "hollow, dull bump" from the after deck. Looking in the direction of the sound he saw smoke and a small (2651) flame coming from the after weather deck on the port side. (Lib. F.F. 11 as modified by Court; Pet. F.F. 13; Res. F.F. 8) At the time the "Black Gull" was proceeding toward New York at a speed of approximately 16½ knots with the wind on her port bow. (Lib. F.F. 11) Her position was 40° 30′ N, 71° W, 50 or 60 miles from the nearest point on the U. S. coast line. (Pet. F.F. 67, 68) The smoke and a little flame were at the middle of the top of the stow of the bagged naphthalene on the port side abreast No. 4 hatch. (Lib. F.F. 11 as modified by Court)

12. The third mate ran to call the master, met him in the alleyway to the master's cabin, notified him (Lib. F.F. 12; Pet. F.F. 14 as modified by Court), ordered water on deck and then went to the port side of the after part of the boat deck immediately above the weather deck and coupled fire hose to a standpipe connection on deck (Lib. F.F. 12; Pet. F.F. 14 and 15), which took but a very brief time, and then with the hose proceeded to the weather deck and to the top of No. 4 hatch to fight the fire with water. (Lib. F.F. 12 as modified by Court; Pet. F.F. 15)

13. From his position on No. 4 hatch, the third mate observed fire at the middle of the top of the stow of bags on the port side abreast No. 4 hatch. (Lib. F.F. 13; Pet. F.F. 14; Res. F.F. 9). He also saw flames burning between the second and third tiers from the top of the bags of naphthalene facing the port side of No. 4 hatch but the top tier of the bags on the port side abreast the hatch was not on fire immediately above the flames between the second and third tiers. (Lib. F.F. 13; Pet. F.F. 16 and 17; Res. F.F. 9) (2652) The first close investiga-

tion found the fire on the middle of the top of the stow alongside No. 4 hatch and on the side of the stow next to No. 4 hatch between the second and third tiers from the top. (Pet. F.F. 25 as modified by Court)

14. Despite the efforts of the crew in fighting the fire, it spread over the whole ship and it was necessary some 4½ hours later to abandon ship. (Lib. F.F. 14; Res. F.F. 10)

Petitioner did everything within its power to extinguish the fire. (Pet. F.F. 50 as modified by Court)

Water was applied to the fire immediately after it was discovered, and at a time when the fire was still restricted to a small area. (Pet. F.F. 51)

There is no evidence which would justify finding or belief that petitioner's failure to extinguish the fire, after four and a half hours of fighting the fire, was due to any fault of petitioner. (Pet. F.F. 52)

The officers and crew of the "Black Gull" did the best possible job against an unbeatable fire. (Pet. F.F. 53)

15. As a result of the fire, four members of the crew lost their lives; certain passengers sustained or alleged they sustained personal injuries and sustained loss of their baggage and personal effects; most of the cargo was either detroyed or damaged and the ship became a constructive total loss. All claims in these proceedings arose out of the fire. (Lib. F.F. 15; Pet. F.F. 11, 12; Res. F.F. 11)

16. All of the cargo of the "Black Gull" was carried under bills of lading issued by the charterer on its own be- (2653) half and on behalf of the master. (Lib. F.F. 17)

17. One of the members of the crew who died in the fire was Josef A. Verbeeck, a Belgian National, who had

signed on as a mess boy. Under Norwegian law, (which governed because the vessel was of Norwegian registry), no right of action exists in favor of his widow and children (claimants and libellants here) against those responsible for his death unless his death was caused by negligence. (Lib. F.F. 16 as modified by Court)

Among the passengers on board the vessel at the time of the fire were claimants Mr. and Mrs. Jan A. Driesprong, Wilhelmina Driesprong, Mr. and Mrs. Thomas D. Leeson, Jeannie Leeson, Jacobus de Nobel and Pieter Spaanderman. (Passenger Cl. F.F. 1)

18. There were two possible causes of the fire, namely, external ignition from something like a cigarette butt or spark or spontaneous combustion in the stow of naphthalene. (Pet. F.F. 18 as modified by Court)

19. The top surface of the naphthalene on the "Black Gull" was not protected from the elements by covered erections, structural or otherwise, and was not protected from the direct rays of the sun by means of awnings, tarpaulins or dunnaging. (Lib. F.F. 24 as modified by Court)

20. During the voyage, the temperatures ranged from a high of 77° F. to a low of 61° F. The last temperature recorded in the vessel's log book was for the 4 to 8 p. m. watch on July 18, 1952 and indicated a temperature of 72° F. These temperatures were taken on the bridge in the shade. (Pet. F.F. 20; Res. F.F. 7)

(2654)

21. The passengers were permitted on the main deck on which the naphthalene was stowed, as well as on the boat deck amidships and on the bridge deck above that. (Lib. F.F. 35)

22. The crew passed along the main deck beside the naphthalene on the way from their quarters aft to the bridge and the forward part of the vessel every watch. (Lib. F.F. 36)

23. Certain of the passengers smoked on the voyage, as did certain of the vessel's officers and crew. (Lib. F.F. 37)

24. The passengers smoked during the voyage on the weather deck, the boat deck, the sun deck and the bridge deck. The officers smoked in the chartroom and the wheel house. Some of the crew smoked on the main deck. Some of the passengers smoked on the boat deck after dinner on the evening of July 18th. (Lib. F.F. 38; Pass. Cl. F.F. 2 as modified by Court)

25. There were no receptacles on any of the decks for burned cigars, cigarettes or matches. (Lib. F.F. 39; Pass. Cl. F.F. 2)

26. The stow of naphthalene aft was uncovered and extended forward to within approximately 6 feet of the boat deck. (Pass. Cl. F.F. 3 as modified by Court)

27. As the temperature rises naphthalene gives off increasing amounts of gas. (Lib. F.F. 45 as modified by Court)

28. There was no direct testimony of external ignition. (Pet. F.F. 31)

(2655)

29. The sun's rays could not have caused or contributed to the cause of the fire. (Pet. F.F. 40 as modified by Court)

30. Tarpaulins are inflammable. (Pet. F.F. 45 as modified by Court)

31. Coverage of the stow of bagged naphthalene with a tarpaulin would not have prevented the fire on the "Black Gull." (Pet. F.F. 41)

32. A tarpaulin coverage would not have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have afforded protection only if the creosote oil or gases could not impregnate the tarpaulin or if the tarpaulin itself was not inflammable. Neither is the fact. (Pet. F.F. 42)

33. The gases given off by crude naphthalene would permeate or saturate tarpaulins which covered bagged naphthalene. (Pet. F.F. 43)

34. Creosote oil from the crude naphthalene and the gases given off by the crude naphthalene could have impregnated a tarpaulin covering bagged crude naphthalene and would thereby make the tarpaulin as inflammable as the impregnated bagging. (Pet. F.F. 44)

35. The failure to cover the bags of naphthalene on the "Black Gull" with a tarpaulin was not and could not have been a contributing cause of the fire. (Pet. F.F. 46)

36. Even if it be assumed that failure to cover the stow of bagged naphthalene with a tarpaulin was either negli- (2656) gence or in violation of controlling statute or regulation, libellants have not proved that that failure was a proximate cause of the fire. (Lib. F.F. 50 as modified by Court)

37. Pure naphthalene is not susceptible to spontaneous ignition. (Lib. F.F. 28)

38. New and empty burlap bagging is not susceptible to spontaneous ignition. (Lib. F.F. 29 as modified by Court)

39. The burlap bags in which the naphthalene on the "Black Gull" was bagged had previously been used. (Lib. F.F. 31)

40. None of the bags in which the naphthalene on the "Black Gull" was bagged was ever tested for susceptibility to spontaneous ignition. (Lib. F.F. 33)

41. There is a theoretical possibility of spontaneous ignition of the bags containing the naphthalene. (Lib. F.F. 42)

42. Spontaneous ignition could not develop on the top of the stow. (Lib. F.F. 43)

43. Spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire. (Pet. F.F. 32)

44. There had not been a lifeboat drill for more than three months prior to the disaster. (Pass. Cl. F.F. 8)

45. The Captain and officers of the vessel knew that a naphthalene fire could be extremely dangerous to the passengers and cargo. (Pass. Cl. F.F. 9)

46. The starboard lifeboat containing the passengers (2657) was not lowered into the water until one half hour after the fire was detected, and the port lifeboat was consumed by the flames. (Pass. Cl. F.F. 10)

47. The port lifeboat was constructed of wood and had an engine which was in operating condition. (Pass. Cl. F.F. 7)

48. The port lifeboat could have been launched in four or five minutes by a crew of four men. (Pass. Cl. F.F. 6)

49. The starboard lifeboat was held fast to the vessel by a rope (painter) led forward to the deck of the "Black Gull" and there made fast. (Pass. Cl. F.F. 11)

50. The rope (painter) holding the starboard lifeboat was cut and the starboard lifeboat floated back to a position along the side of the vessel where the intense heat from the fire caused pain to the passengers and caused them to get into the sea at the direction of the second mate. (Pass. Cl. F.F. 13 as modified by Court)

51. The rope (painter) was under the sole control of the officers and crew of the vessel. (Pass. Cl. F.F. 14)

52. The rope (painter) was cut from the bow of the starboard lifeboat by the Third Mate to allow the starboard lifeboat to be got free of the side of the vessel. (Pass. Cl. F.F. 15 as modified by Court)

53. It was necessary to keep starboard lifeboat close to the "Black Gull" after it was launched to take on members of the crew if total abandonment of the vessel was ordered, and it was necessary to keep the starboard lifeboat moored to the "Black Gull" for that reason, even at the risk (2658) of some scorching of passengers in that lifeboat. (Pet. F.F. 57)

54. To have lowered the port lifeboat would have required sending men into an area close to the fire, which the master of the "Black Gull" felt would unnecessarily place those men in a potentially dangerous situation. (Pet. F.F. 58)

55. The starboard lifeboat had sufficient capacity for all members of the crew and passengers, and there was therefore no absolute necessity for saving the port lifeboat. (Pet. F.F. 59)

56. The master's choice in not saving the port lifeboat cannot be said to have been negligent. (Pet. F.F. 60)

57. At the time that choice was made it was foreseeable that the fire would be extinguished, and there was therefore no need to send men into the fire area to lower the port lifeboat. (Pet. F.F. 61)

58. Once the port lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. (Pet. F.F. 62)

59. The starboard lifeboat with the passengers in it was lowered from its davits on the midship building, and then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side, and the boat was shipping water and at the same time water from the fire hoses was running through the scuppers on deck into the boat. The second officer, who was in the lifeboat, cut the painter which moored the boat to the "Black Gull", and the members of the crew in the boat tried to get the boat clear (2659) of the ship's side, but the ship had headway and they were unable to get the boat far enough from the "Black Gull" before the boat got abreast of the fire at No. 4 hatch. The second officer therefore ordered all to go overboard on the lee side of the boat and hang on to the lifeline. After the boat passed No. 4 hatch they all got back into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew thereafter

jumped overboard from the "Black Gull" and were picked up in the lifeboat, and all the rest of the crew, except the four who lost their lives, came aboard the lifeboat from the "Black Gull." All in the lifeboat were rescued by the "Gripsholm." (Pet. Rev. F.F. 63)

60. It was necessary to keep the lowered starboard lifeboat close to the burning vessel. There is no reason to believe that if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. (Pet. Rev. F.F. 64 as modified by Court)

61. Libellants and claimants have not sustained the burden of establishing that petitioner or respondent negligently accepted cargo in a condition susceptible to spontaneous combustion or negligently failed to stow it so as to inhibit spontaneous combustion. (Lib. F.F. 44 as modified by Court)

62. There is no proof that the fire on the "Black Gull" was caused by negligence of the petitioner. (Pet. F.F. 47)

63. Claimants have not sustained their burden of proof of failure of the petitioner to exercise the high de- (2660) gree of care which a carrier must devote to the safety of passengers. (Pet. F.F. 48)

64. Claimants have not proven that failure to exercise a high degree of care was the proximate cause of any loss or damage. (Pet. F.F. 49)

65. There was no negligence either in the use of or the launching of the lifeboats. (Pet. F.F. 54 as modified by Court)

66. There was no negligence in failure to lower the "Black Gull's" port lifeboat as soon as the severity of the fire was discovered in order to prevent destruction of that boat. (Pet. F.F. 55 as modified by Court)

67. There was no negligence of the master or crew of the "Black Gull" in fighting the fire or in the rescue operations. (Pet. F.F. 65)

68. The stowage of the "Black Gull's" naphthalene cargo was personally planned, supervised and approved by Capt. H. Hollaar, European Marine Superintendent of respondent Black Diamond Steamship Corp. He knew that the naphthalene on deck was not covered. (Lib. F.F. 57)

69. At the time said cargo was stowed, Capt. Hollaar was in complete charge of all matters of stowage on vessels under charter to respondent, and had no superior in Europe. (Lib. F.F. 58)

70. At and before the time of the voyage here involved, it was personally known to Capt. Inge Svendsen, who assisted the head of the Marine Department of S. Herlofsen & Co., which managed the "Black Gull" for petitioner, that (2661) respondent customarily carried bagged naphthalene on deck on vessels which it chartered from petitioner, covered only by manila rope netting. (Lib. F.F. 60 as modified by Court)

71. The "Black Gull's" master did not intend to change the stowage of her naphthalene cargo prior to its discharge in United States ports. (Lib. F.F. 56)

CONCLUSIONS OF LAW

1. The "Black Gull" and petitioner and respondent were common carriers. (Lib. C.L. 1)

2. The transportation of the "Black Gull's" cargo was subject to the Carriage of Goods by Sea Act (46 U. S. C., Sec. 1300 *et seq.*). (Lib. C.L. 2)

3. As between cargo claimants and petitioner, the Fire Statute (46 U. S. C. Sec. 182) was also applicable. (Lib. C.L. 3)

4. The burden rested on cargo libellants and cargo claimants to establish that the fire resulted from the actual fault or privity of respondent or from the design or neglect of petitioner; and the burden rested on death claimants to establish that the death of Verbeeck resulted from negligence of respondent or petitioner. (Lib. C.L. 4)

5. The proximate cause of the fire aboard the M. V. "Black Gull" has not been established. (Res. C.L. 2)

6. All claimants were required to prove that the petitioner was negligent and that that negligence was the cause of the fire, whether the fire started by external ignition or by spontaneous combustion. Claimants failed in such (2662) proof. (Pet. C.L. 2)

7. The fire was not caused by the design or neglect of the petitioner and the Fire Statute is a complete defense as to all claims for cargo loss or damage. (Pet C.L. 1)

8. Claimants and libellants failed to sustain their burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to

spontaneous combustion or in failing to stow the cargo so as to inhibit spontaneous combustion. (Pet. C.L. 5; Res. C.L. 1 as modified by Court)

Any failure to detect the presence of foreign materials in bagging which might precipitate spontaneous combustion under certain temperature conditions at the time when the vessel was stowed was not a violation of any duty owed passenger libellants. (Pass. Cl. C.L. 4 as modified by Court)

9. Libellants and claimants have not sustained their respective burdens. (Lib. C.L. 5)

10. The conduct of the officers and crew of the M. V. "Black Gull" in fighting the fire was proper. (Res. C.L. 3)

11. Failure to launch the port lifeboat to assure the safety of passengers was not a violation of duty to exercise a high degree of care. (Pass. Cl. C.L. 5)

12. The cutting of the painter which moored the lifeboat to the "Black Gull" was not negligent. (Pet. C.L. 9)

13. The failure to get the lifeboat far enough away from the "Black Gull" to avoid scorching as the boat passed (2663) under No. 4 hatch was not negligent. (Pet. C.L. 10)

14. Claimants and libellants are not entitled to any recovery, and petitioner is entitled to a decree granting its petition for exoneration from liability and respondent to decrees dismissing the libels. (Lib. C.L. 6; Pet. C.L. 7)

(sgd.) EDWARD J. DIMOCK
U. S. D. J.

Final Decree

(2671)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. A 174–34

In the Matter of
the Petition of

SKIBS A/S JOLUND, as owner of the motor ship "Black Gull", for exoneration from or limitation of liability for damages arising out of a fire on board the vessel on 18 July 1952.

A petition having heretofore and on August 7th, 1952 been filed herein by Skibs A/S Jolund, as owner of the motor ship "Black Gull", for exoneration from or limitation of liability for damages arising out of a fire on board the said motor ship on July 18th, 1952; and an order of Hon. John C. Knox, United States District Judge, having heretofore, and on August 7th, 1952 been made and entered herein for the filing of an ad interim stipulation for value by the said petitioner in the sum of $218,563; and the petitioner having filed such stipulation for value and also a stipulation for costs in the sum of $250, on both of which stipulations National Surety Corporation was surety; and the said petition for limitation of liability having thereafter and on August 21, 1952 been amended, pursuant to order of Hon. David N. Edelstein, United States District Judge; and a further order having on August 7, 1952 been made and entered herein by Hon. John C. Knox, United States District Judge, directing the issuance of a monition enjoining suits and directing filing of claims with the

Clerk of the Court; and said monition and order having been issued, and having provided and ordered that all persons having any claim against the motor ship "Black Gull" and her (2672) pending freight file their claims under oath with the Clerk of this Court on or before September 16th, 1952 or be defaulted; and notice of said monition having been given by publication in the New York Law Journal, pursuant to the order of this Court; and the said monition and citation having been duly issued, served, and published, pursuant to and in accordance with the order of this Court; and the time for filing of claims thereafter from time to time having been extended by court orders; and the time, as so extended, for the filing of all claims having expired; and notice of filing of the amended petition having been duly published, and copy of notice having been mailed pursuant to Rule 52 of the Rules and Practice in Admiralty and Maritime Cases of the United States Supreme Court, together with a copy of the said rule, as more fully appears by the affidavit of Vincent J. Ryan, sworn to September 1st, 1952 and filed herein; and numerous and sundry claims having been filed herein; and the claimants (save and except seamen members of the crew of the said motor ship "Black Gull" or next-of-kin of deceased seamen members of the crew) listed in Schedule A hereto attached and made part hereof as though herein set forth at length, having filed answers to the petition, and having contested petitioner's right to exoneration or limitation; and the issues having duly come on for trial before Hon. Edward J. Dimock, United States District Judge, and having been tried before the court on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27, 28, 1956; and the proctors for respective parties having argued the case, and due deliberation having been had; and an opinion and decision and amended opinions and decisions, having been duly made and filed herein; and the proctors for the petitioner and the proctors for some of the claimants who

filed answers to the petition having filed proposed (2673) findings of fact and conclusions of law; and the court having made findings of fact and conclusions of law; and under date of October 3, 1956 an order herein having been made and filed consolidating therein the said findings and conclusions; and the court having, among other matters decided, found, and concluded that the fire was not caused by the design or neglect of the petitioner, and that there was no fault or negligence of the petitioner, and that the petitioner should be exonerated from any and all liability; and the costs and disbursements of the petitioner having been duly taxed in the sum of $2,602.25

Now, on the pleadings and proceedings herein and the evidence adduced at the trial, and the opinions and decisions filed herein, and the findings of fact and conclusions of law made and filed herein; and on motion of Pyne, Brush, Smith & Micheisen, proctors for the petitioner, it is

ODERED, ADJUDGED, AND DECREED:

(1) That the defaults of all persons and corporations who may have sustained any loss, destruction, damage, or injury caused by or arising out of the fire which occurred on the motor ship "Black Gull" on July 18th, 1952, and who have not heretofore filed claims in these proceedings, be and they hereby are noted and entered; and

(2) That the filing or presentation hearafter of any claim or answer in these proceedings, and the bringing of any action or suit, at law, in admiralty, in equity, or the presentation or making of any claim or demand, in any court or any tribunal or in any manner or place, anywhere, against the said motor vessel "Black Gull" or against (2674) the petitioner Skibs A/S Jolund, be forever barred,

enjoined and restrained, and all persons or corporations be and they hereby are perpetually enjoined and restrained from bringing any suit or action or making any claim arising out of loss, damage, death, or injury caused or alleged to have been caused, or arising or alleged to have arisen out of said fire; and

(3) That the fire on board the motor ship "Black Gull" which occurred on July 18th, 1952, and any and all loss, destruction, damage, deaths, or injuries resulting therefrom or caused thereby, were done, occasioned, and occurred without the privity or knowledge of, and without design or neglect of, and without fault or liability on the part of, petitioner Skibs A/S Jolund, or the said motor ship "Black Gull", or those in charge of the said motor ship; and

(4) That the petitioner Skibs A/S Jolund and the motor ship "Black Gull" be and they are hereby forever exempted, exonerated, and discharged from any and all liability for any and all claims for loss, destruction, damage, death, or injury arising out of the aforesaid fire; and

(5) That all claims filed herein be and they are hereby dismissed and disallowed on the merits; and

(6) That the petitioner Skibs A/S Jolund recover from each of the claimants listed in Schedule A hereto attached who contested petitioner's right to exoneration from or limitation of liability and their stipulators for costs the sum of $18.20 each, so that each of said claimants and their stipulators for costs shall be liable for 1/143rd of petitioner's costs and disbursements as taxed, with interest from the date of this decree until paid; and

(2675)

(7) That unless the payment hereinbefore prescribed and ordered be made, the stipulators for costs on behalf of the respective claimants shall cause the engagement of their stipulators to be performed, or show cause upon a notice of five (5) days why execution should not issue against them, their goods, chattels, and lands; and

(8) That on the filing herein of an ad interim stipulation for value executed by the petitioner Skibs A/S Jolund as principal, and by Assuranceforeningen Gard, of Arendal, Norway, as surety, in the sum of $218,563, with interest from the 18th day of July 1952, the ad interim stipulation for value dated the 5th day of August 1952 heretofore filed herein in the sum of $218,563 on which National Surety Corporation is surety be cancelled and discharged of record.

E. J. DIMOCK
U. S. D. J.

Dated: New York, New York
November 27, 1956.

SCHEDULE "A", ANNEXED TO FINAL DECREE

(2676)

American Smelting & Refining Company
Atkinson Haserick & Co.
Anglo Fabrics Company, Inc.
Frederick E. Aubel, Jr. & Frederick E. Aubel, III, co-partners doing business under the firm name of F. & E. Aubel.
Olaf Ravndal as treasurer of American Express Company, an unincorporated association of more than 7 persons.
Atalanta Trading Corporation.

Schedule "A", Annexed to Final Decree

Archer-Daniels-Midland Company
Ameurope Metals, Inc.
Ernest Adler Co., Inc.
American Overocean Corporation.
Associated Metals & Minerals Corporation.
Stanley Wallach doing business as The Atlantic Works.
Beatty & Hyde, Inc.
Bracht & Co., Inc.
The Baker Castor Oil Company
Browning Chemical Corporation
Bell Telephone Manufacturing Company, S. A.
Budde & Westerman
D. Benedetto, Inc.
Baloise Marine Insurance Company, Ltd.
Cordingley Company
Capital Airlines
Columbia Export Co. Inc.
Colonial Mirror & Glass Corp.
Frederick H. Cone & Co., Inc.
Cosa Corporation
Ezl. Dunwoody Co.
Dickerson's Overseas Company, a Division of the Dickerson Company, Inc.

(2677)

A. de Swaan, Inc.
Delmey Trading Corporation
The Enterprise Manufacturing Company of Pennsylvania
A. L. Erlanger Co. Inc.
J. Eisenberg, Inc.
European Chemical Co., Inc.
Wm. S. Febiger Co. & Intercontinental Wool Co.
Robert S. Fish & Co., Inc.
Federal Liquors, Ltd.
Lewis C. Franklin & Lewis C. Franklin, Jr. co-partners doing business under the firm name and style of Franklin & Co.

Schedule "A", Annexed to Final Decree

Frieman Knitwear Corporation
Federated Department Stores, Inc. The F. & R. Lazarus & Company, Div.
Fein & Co., Inc.
B. S. Bergensen & Jorgen Krag, co-partners doing business under the firm name and style of Frosty Foods Company.
Frank A. G.
Andrew Fisher Cycle Co., Inc.
Fallani & Cohn Co. Inc.
Garden Supply Sales Corporation
Gotaas Export Corporation
Robert A. Hurley & Co. Inc.
Richard W. Homer doing business under the firm name and style of Richard W. Homer Company.
A. H. Helmig & Co., Inc.
Frank B. Healis & Co., Inc.
Hohenberg Co., Inc.
Industrial Sales Corporation
Innis Speiden & Co., Inc.
Imperial International Corporation

(2678)

Imex, S. A.
Import-Export Industries, Inc.
International Expediters, Inc.
Interstate Casing Corporation
J. M. Trading Corporation
Jacky Maeder & Co.
Robt. Jowitt & Sons, Ltd.
Kreglinger, Inc.
H. M. Koeningswerther, Inc.
Albert Kremper
Fred H. Lenway & Co., Inc.
Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon,

Schedule "A", Annexed to Final Decree

Henry Parish II, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Hebert Higgins, and Samuel L. Stedman, co-partners doing business under the firm name and style of Carl M. Loeb Rhoades & Company.

Lador S. A.
Maryland Trading Corporation
Munro Kincaid Mottla, Inc.
Mandel Brothers, Inc.
Marble Supply Corporation of America
Monsanto Chemical Co.
Marum Knitting Mills, Inc.
Metasco, Inc.
Mitropa Corporation
Miller Products Export Corporation
Merino Wool Corporation
Modern Exportation
Harry Liebowitz doing business as Modern Glass & Wire Supply Company.

(2679)

Mercaderial Peruanas S. A.
Meyerhans & Cie. S. A.
Establissements Francois Masurel Freres
Norge Boats, Inc.
John E. Murray & Charles S. Nicholson co-partners doing business under the firm name and style of Nicholson & Company.
North & Central American Hide Corporation
New Amsterdam Import Co., Inc.
Richard M. Ott & Sons, Inc.
Otis McAllister & Co.
O'Neill Brothers, Inc.
Parker Machine Co., Inc.
Paper Corporation of United States

Schedule "A", Annexed to Final Decree

Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim & George T. Beattie as trustees of Henry W. Peabody & Co., Association, A Massachusetts Voluntary Trust

Pojhola Insurance Company

William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell R. Longshore co-partners doing business under the firm name and style of I. Reifsnyder Son & Co.

Joseph Rosenthal's Sons Inc.

S. Rosenfelder & Son, Inc.

Reliance International Manufacturing Co.

Walter H. Rothschild & Co., Inc.

S. K. F. Industries, Inc.

Irving M. Sobin Co., Inc.

Jos. Sultan & Sons, Inc.

Paul A. Straub & Co. Inc.

E. Richard Schwabach, Julius Schure, N. W. Feingold, Paul D. Perutz, George J. Perutz and Fred W. Perutz, co-partners doing business under the firm name and style of Schwabach & Company.

(2680)

Christopher Smiles & Co., Inc.

F. Schumacher & Co.

George Scherr & Co., Inc.

William Steck & Co. Inc.

Standard Sales Steel Co. Inc.

J. Shore & Co.

R. K. Sterling & Maude A. Sterling co-partners doing business under the firm name and style of D. L. Sterling & Sons

A. Samyn Permandt

Societe des Mines et. Fonderies de Zinc de la Vieille Montagne (S. A.)

Stein Hall & Co., Inc.

Schedule "A", Annexed to Final Decree

Switzerland General Insurance Company, Ltd.
William T. Newbold & James M. Reilly co-partners doing business under the firm name and style of Nathan Trotter & Co.
F. H. Taussig
The Travelers Fire Insurance Company
Touraine Flowers, Inc.
United Hat Fur Cutting Company
Bernhard Ullmann & Co., Inc.
Ullmann-Allied Overseas Associates Ltd.
Union des Fabriques Belges de Textiles Artificiels S. A.
Firma J. van Beelen c. v.
C. J. Van Houten & Zoon n. v.
Western Dairy Products, Inc.
S. H. Waldstein Co., Inc.
Wool Distributing Corporation
George Wertheimer
W. W. Windle Company
Rembert Wurlitzer
Theodore Willich, Albert Willich & Anton F. Dolce, co-partners doing business under the firm name and style of Willich & Company and
David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners doing business under the firm name and style of Samuel Zeitlin's Sons.

(2681)

Jan A. Driesprong
Janna Driesprong
Wilhemina Dreisprong
Thomas D. Leeson
Jeanne Leeson
Jacobus De Nobel
Pieter Spaanderman
Wurttembergische und Badische Vereinigte Versicherungsgesellschaften A. G.
United Fruit Company

Claimants' Notice of Appeal

(2682)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 174-34

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the M. S. "Black Gull", for exoneration from or limitation of liability.

Sirs:

PLEASE TAKE NOTICE that claimants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.; The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc; Baloise Marine Insurance Company, Ltd.; Cordingly Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger

Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis C. Franklin, Jr., Co-partners d/b/u firm name & style of Franklin & Company; Friemen Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, Co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. (2683) Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erff, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Horastein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge

Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry F. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Standard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union DesFabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners

d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L; Charles Censor; Garnindustrie G. M. B. H.; A/S Dansk Kodekstrakt Co. Aabenraa; Andels-Svineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2684)

appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
December 14, 1956.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

HERBERT A. CHARLTON, Esq.,
Clerk of the United States
District Court for the Southern
District of New York

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New York 38, N. Y.

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New York, N. Y.

DOW & STONEBRIDGE Esqs.
Proctors for Claimant
70 Pine Street
New York, N. Y.

Assignments of Error

(2686)

A 174–34

[SAME TITLE]

Appellants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.; The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc.; Baloise Marine Insurance Company, Ltd.; Cordingley Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis G. Franklin, Jr., co-partners d/b/u firm name and style of Franklin & Company; Frieman Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher

Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co. Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish, 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, (2687) Frederick T. Koyle, J. Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S. A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Associa-

tion, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Standard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union Des Fabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L.; Charles Censor; Garnindustrie G. M. B. H.; A/S. Dansk

Kodekstrakt Co. Aabenraa; Andelssvineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2688)

hereby assign error to the opinions, findings of fact and conclusions of law, and to the decree of the United States District Court for the Southern District of New York in this cause, as follows:

1. In that the District Court failed and refused to find that the stowage of the "Black Gull's" naphthalene cargo was negligent.

2. In that the District Court failed and refused to find that the negligent stowage of her naphthalene cargo was causally related to the fire and the damage resulting therefrom.

3. In that the District Court failed and refused to hold that the law of the United States forbade transportation of the "Black Gull's" naphthalene cargo excepting in accordance with the regulations of the United States Coast Guard.

4. In that the District Court failed and refused to hold that the regulations of the United States Coast Guard required that the "Black Gull's" naphthalene cargo, stowed on deck, be stowed "protected" or "under cover", as defined by the Coast Guard regulations.

5. In that the District Court failed and refused to hold that the United States Coast Guard regulations required that "Black Gull's" naphthalene cargo, stowed on deck, be

inspected daily in the course of the voyage for evidence of spontaneous heating.

6. In that the District Court failed and refused to find that the "Black Gull's" naphthalene cargo was stowed in violation of the regulations of the United States Coast Guard.

(2689)

7. In that the District Court failed and refused to find that at the time the "Black Gull's" naphthalene cargo was stowed at Rotterdam there was in effect a regulation of the Government of the Kingdom of the Netherlands governing its stowage.

8. In that the District Court failed and refused to find that at the time the naphthalene cargo of the "Black Gull" was stowed at Rotterdam its stowage violated the applicable regulation.

9. In that the District Court failed and refused to hold that the regulations of the United States Coast Guard, even if inapplicable with statutory force, established a standard of care for the stowage of naphthalene.

10. In that the District Court failed and refused to find that the regulation of the Kingdom of the Netherlands in effect at the time the "Black Gull's" deck cargo of naphthalene was stowed at Rotterdam established a standard of care for the stowage of such cargo.

11. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene fell short of the standard of care established by the regulations of the United States Coast Guard, and was negligent.

Assignments of Error

12. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene fell short of the standard of care established by the Dutch regulation, and was negligent.

13. In that the District Court failed and refused to find that the stowage of the "Black Gull's" deck cargo of naphthalene created a situation fraught with the danger of fire.

(2690)

14. In that the District Court failed and refused to find that, as stowed, the "Black Gull" was unseaworthy for the voyage contracted for in the bills of lading; and that that unseaworthiness existed because due diligence was not exercised to make her seaworthy.

15. In that the District Court found that the fire on the "Black Gull" may have resulted from spontaneous ignition of her naphthalene cargo.

16. In that the District Court failed and refused to find that the fire on the "Black Gull" resulted from ignition of her naphthalene cargo from an external source.

17. In that the District Court failed and refused to find that stowage of the "Black Gull's" deck cargo of naphthalene "protected" or "under cover", as defined in the United States Coast Guard Regulations, was designed to and would have eliminated the danger of the fire which occurred.

18. In that the District Court held that both death claimants and cargo owners must negative a theoretical but improbable possibility of the fire if that theoretical possibility might exempt the appellees from liability.

BIGHAM, ENGLAR, JONES & HOUSTON
Proctors for Claimants

Final Decree in American Smelting & Refining Company, et al.

(2894)

A. 178–342

In a stated term of the United States District Court for the Southern District of New York, held at the Court House, New York, New York on the 27 day of November, 1956.

Present: THE HONORABLE E. J. DIMOCK, *District Judge.*

[SAME TITLE]

This cause having come on to be heard in its regular order on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27 and 28, 1956 upon the pleadings and proof, and having been argued and submitted by the advocates of the respective parties, and the court, after due deliberation, having rendered its opinion in writing and directing a decree dismissing the libel herein with costs and the respondents costs having been duly taxed at the sum of $1,212.70.

Now, on motion of Dow & Symmers, proctors for the respondents, it is

ORDERED, ADJUDGED AND DECREED that the libel herein be and the same hereby is dismissed on the merits and the respondents Black Diamond Steamship Corporation and Black Diamond Lines Inc. recover of the libellants and their stipulators for costs the sum of $1,212.70, costs as taxed, which sum shall bear interest from the date of this decree until (2895) paid and that the respondents have judgment and execution against the said libellants therefor.

E. J. DIMOCK
U. S. D. J.

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

(2899)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 178–342

AMERICAN SMELTING AND REFINING COMPANY, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORP. and BLACK DIAMOND LINES, INC.,

Respondents.

Sirs:

PLEASE TAKE NOTICE that libellants:

Atkinson Haserick & Company; Anglo Fabrics Co. Inc.; Frederick E. Aubel, Jr. and Frederick E. Aubel, III, co-partners d/b/u the firm name and style of F. & E. Aubel; Olaf Ravndal, as Treasurer of American Express Company; Atalanta Trading Corp.; Archer-Daniels-Midland Company; Ameurope Metals, Inc.; Ernest Adler Co. Inc.; American Overocean Corporation; Associated Metals & Minerals Corporation; Stanley Wallach d/b/a The Atlantic Works; Beatty & Hyde, Inc.; Bracht & Co., Inc.;

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

The Baker Castor Oil Company; Browning Chemical Corporation; Budde & Westermann; D. Benedetto Inc.; Baloise Marine Insurance Company, Ltd.; Cordingley Company; Capital Airlines; Columbia Export Co., Inc.; Colonial Mirror & Glass Corp.; Cosa Corporation; Ezl. Dunwoody Co.; A. DeSwaan Inc.; Delmey Trading Corporation; The Enterprise Manufacturing Company of Pa.; A. L. Erlanger Company Inc.; J. Eisenberg, Inc.; European Chemical Co. Inc.; Wm. S. Febiger Co. and Intercontinental Wool Company; Robert S. Fish & Co. Inc.; Federal Liquors, Ltd.; Lewis C. Franklin and Lewis C. Franklin, Jr., co-partners d/b/u firm name & style of Franklin & Company; Frieman Knitwear Corporation; Federated Department Stores Inc., The F. & R. Lazarus & Company Division; Fein & Co. Inc.; B. S. Bergesen & Jorgen Krag, co-partners d/b/u firm name & style of Frosty Foods Company; Frank A. G.; Andrew Fisher Cycle Co. Inc.; Fallani & Cohn Inc.; Garden Supply Sales Corporation; Gotaas Export Corp.; Robert A. Hurley & Co. Inc.; Richard W. Homer d/b/a Richard W. Homer & Company; A. H. Helmig & Co. Inc.; Frank B. Healis & Co. Inc.; Hohenberg Co. Inc.; Industrial Sales Corporation; Innis, Speiden & Co. Inc.; Imperial International Corp.; Imex S. A.; Import-Export Industries Inc.; International Expediters Inc.; Interstate Casing Corp.; J. M. Trading Corp.; Jacky Maeder & Co.; Robt. Jowitt & Sons Ltd.; Kreglinger, Inc.; H. M. Koenigswerther Inc.; Lador S. A.; Fred H. Lenway & Co. (2900) Inc.; Carl M. Loeb, Henry A. Loeb, John L. Loeb, Armand G. Erpf, W. Palmer Dixon, Theodore Bernstein, Stephen A. Koshland, Hans A. Widenmann, Frank E. Gernon, Henry Parish 2d, Samuel L. Hornstein, A. Raymond McKernan, Clifford W. Michel, Mark J. Millard, Frederick T. Koyle, J.

Notice of Appeal of Libellants Atkinson Haserick & Company, et al.

Herbert Higgins, Samuel L. Stedman, co-partners d/b/u the firm name and style of Carl M. Loeb, Rhoades & Company; Maryland Trading Corporation; Munro Kincaid Mottla Inc.; Mandel Brothers Inc.; Marble Supply Corporation of America; Monsanto Chemical Company; Marum Knitting Mills Inc.; Metasco, Inc.; Mitropa Corporation; Miller Products Export Corp.; Merino Wool Corporation; Modern Exportation; Harry Liebowitz, an individual doing business as Modern Glass & Wire Supply Company; Mercaderias Peruanas S. A.; Meyerhans & Cie. S. A.; Etablissement Francois Masurel Freres; Norge Boats Inc.; John E. Murray and Charles S. Nicholson, co-partners d/b/u the firm name & style of Nicholson & Company; North & Central American Hide Corporation; New Amsterdam Import Co. Inc.; Richard M. Ott & Sons, Inc.; Otis McAllister & Co.; O'Neill Brothers Inc.; Parker Machine Co., Inc.; Paper Corporation of United States; Kenneth S. Magoon, John A. Magoon, Lawrence B. Blenheim and George T. Beattie, as Trustees of Henry W. Peabody & Co., Association, a Massachusetts Voluntary Trust; Pohjola Insurance Company; William A. Longshore, Malcolm R. Longshore, Henry G. Reifsnyder, Henry P. Orlemann, Jr. and Russell E. Longshore, co-partners d/b/u the firm name and style of I. Reifsnyder Son & Co.; S. Rosenfelder & Son Inc.; Reliance International Manufacturing Co.; Walter H. Rothschild & Company, Inc.; S K F Industries Inc.; Irving M. Sobin Co. Inc.; Jos. Sultan & Sons Inc.; Paul A. Straub & Co. Inc.; E. Richard Schwabach, Julius Schure, M. W. Feingold, Paul D. Perutz, George J. Perutz, Fred W. Perutz, co-partners d/b/u the firm name and style of Schwabach & Company; Christopher Smiles & Co., Inc.; F. Schumacher & Co.; George Scherr Co. Inc.; William Steck & Co. Inc.; Stand-

ard Sales Steel Co. Inc.; J. Shore & Co.; R. K. Sterling and Maude A. Sterling, co-partners d/b/u the firm name and style of D. L. Sterling & Sons; A. Samyn Permandt; Societe Des Mines Et Fonderies De Zinc De La Vieille Montagne (S. A.); Stein, Hall & Company, Inc.; Switzerland General Insurance Company, Ltd.; F. H. Taussig; The Travelers Fire Insurance Company; Touraine Flowers Inc.; United Hat Fur Cutting Company; Bernhard Ulmann Co. Inc.; Ullmann-Allied Overseas Associates, Ltd.; Union Des Fabriques Belges De Textiles Artificiels S. A.; Western Dairy Products Inc.; S. H. Waldstein Co. Inc.; Wool Distributing Corporation; Georg Wertheimer; W. W. Windle Company; Rembert Wurlitzer; Theodore Willich, Albert Willich and Anton F. Dolce, co-partners d/b/u the firm name and style of Willich & Company; David E. Zeitlin, Harry L. Zeitlin and Louis Zeitlin, co-partners d/b/u the firm name and style of Samuel Zeitlin's Sons; B. N. S. International Sales Corp.; W. L. M. Bensdorp Company; N. V. Tweka Tricotfabrieken; Duesberg-Bosson Machines Textiles S. P. R. L.; Charles Censor; Garnindustrie G. M. B. H.; A/S Dansk Kodekstrakt Co. Aabenraa; Andels-Svineslagteriet i Kolding; United Nations; Edward S. Blake and "John" Boyle (the name "John" being fictitious, the true given name of said person being unknown) co-partners d/b/u the firm name and style of Blake & Boyle

(2901)

appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on

the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
December 14, 1956.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

HERBERT A. CHARLSON, Esq.,
Clerk of the United States
District Court for the Southern
District of New York

MESSRS. DOW & STONEBRIDGE,
Proctors for Respondent
70 Pine Street
New York, N. Y.

Notice of Appeal of Libellants American Smelting & Refining Company, et al.

(2907A)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A. 178–342

AMERICAN SMELTING & REFINING CO., et al.,
Libellants,

—against—

BLACK DIAMOND STEAMSHIP CORP.,
Respondent.

Sirs:

PLEASE TAKE NOTICE that libellants American Smelting & Refining Co.; Bell Telephone Manufacturing Company, S. A.; Frederick H. Cone & Co., Inc.; Jos. Rosenthal's Sons Inc.; William T. Newbold and James M. Reilly, co-partners doing business under the firm name and style of Nathan Trotter & Co.; Firma J. Van Beelen C. V.; and C. J. Van Houten & Zoon, N. V., appeal to the United States Court of Appeals for the Second Circuit from the final decree entered herein on the 27th day of November 1956 and from each and every part of said decree.

Dated: New York, N. Y.
January 15, 1957.

Yours, etc.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

Notice of Appeal of Libellants American Smelting & Refining Company, et al.

To:

Dow & Stonebridge, Esqs.,
Proctors for Respondent
70 Pine Street
New York, N. Y.

Final Decree in Maria Angelina Verbeeck, et al.

(2942)

In a stated term of the United States District Court for the Southern District of New York, held at the Court House, New York, New York on the 27 day of November, 1956.

Present: The Honorable E. J. Dimock, *District Judge.*

A. 178–380

Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Lee Verbeeck,

Libellants,

—against—

Black Diamond Steamship Corporation and Black Diamond Lines, Inc.,

Respondents.

This cause having come on to be heard in its regular order on February 6, 7, 8, 9, 14, 15, 16, 17, 21, 23, 24, 27 and 28, 1956 upon the pleadings and proof, and having been argued and submitted by the advocates of the respective

parties, and the court, after due deliberation, having rendered its opinion in writing and directing a decree dismissing the libel herein with costs and the respondents costs having been duly taxed at the sum of $34.

Now, on motion of Dow & Symmers, proctors for the respondents, it is

ORDERED, ADJUDGED and DECREED that the libel herein be and the same hereby is dismissed on the merits and the respondents Black Diamond Steamship Corporation and Black Diamond Lines Inc. recover of the libellants and their stipulators for costs the sum of $34, costs as taxed, which sum shall bear interest from the date of this decree until (2943) paid and that the respondents have judgment and execution against the said libellants therefor.

E. J. DIMOCK
U. S. D. J.

Notice of Appeal of Libellants Maria Angelina Verbeeck, et al.

(2703)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 178–380

MARIA A. VERBEECK, et al.,

Libellants,

—against—

BLACK DIAMOND STEAMSHIMP CORP.,

Respondent.

Sirs:

PLEASE TAKE NOTICE that libellants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
January 7, 1957.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Libellants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

To:

MESSRS. DOW & STONEBRIDGE.
Proctors for Libellant
70 Pine Street
New York, N. Y.

Notice of Appeal of Claimants Maria Angelina Verbeeck, et al.

(2946)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

A 174–34

In the Matter of the Petition

of

SKIBS A/S JOLUND,

as owner of the M. S. "Black Gull", for exoneration from or limitation of liability.

Sirs:

PLEASE TAKE NOTICE that claimants Maria Angelina Verbeeck, Maurice Verbeeck, Simone Verbeeck and Leo Verbeeck, appeal to the United States Court of Appeals for the Second Circuit from the Final Decree entered herein on the 27th day of November, 1956, and from each and every part of said Decree.

Dated: New York, N. Y.
January 7, 1957.

Yours, etc.,

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Claimants
Office & P. O. Address:
99 John Street
New York 38, N. Y.

Notice of Appeal of Claimants Maria Angelina Verbeeck, et al.

To:

HERBERT A. CHARLTON, Esq.,
Clerk of the United States District Court
for the Southern District of New York

PYNE, BRUSH, SMITH & MICHELSON, Esqs.,
Proctors for Petitioner
116 John Street
New York, N. Y.

ABBERLEY, KOOIMAN & AMON, Esqs.
Proctors for Claimants
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(2947)

JACOB RASSNER, Esq.,
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655 Madison Avenue
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Proctors for Claimant
70 Pine Street
New York, N. Y.

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Supreme Court, U.S.
FILED
FEB 21 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No...800.....

In the Matter

of the

Petition of SKIBS A/S JOLUND, in a cause of exoneration from or limitation of liability for damages arising out of a fire on board the BLACK GULL on July 18, 1952.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ET AL.,
Respondents.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

MARIA ANGELINA VERBEECK, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DANIEL L. STONEBRIDGE
Counsel for Petitioner
70 Pine St.
New York City

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BLACK DIAMOND STEAMSHIP CORP. respectfully prays that a Writ of Certiorari be issued to review the decree of the Court of Appeals for the Second Circuit which reversed the decree of the District Court for the Southern District of New York, and the Order of the Court of Appeals denying Black Diamond's petition for rehearing.

Both the trial and the appeal of the actions against Black Diamond, time charterer of the MV BLACK GULL, were joined with the petition of the vessel owner seeking exoneration from or limitation of liability. (*In the matter of the Petition of Skibs A/S Jolund as owner of the* MV BLACK GULL *for exoneration from or limitation of liability*). The District Court granted owner's petition exonerating it from liability and the Court of Appeals reversed that decree and denied owner's petition for rehearing. Black Diamond had filed a contingent claim against the owner in the limitations proceedings.

THE OPINIONS OF THE COURTS BELOW

The second amended opinion of the District Court for the Southern District of New York is printed in the appendix hereto and is reported at 144 F. Supp. 47. The opinion of the Court of Appeals for the Second Circuit and its opinion denying the petition for rehearing are printed in the appendix hereto but neither has been officially reported.

JURISDICTION

The decree of the Court of Appeals for the Second Circuit was entered on November 29, 1957. A petition for rehearing directed to that Court was denied on January 16, 1958.

These causes were brought by libels and complaints filed by the Respondents herein and are within the admiralty and maritime jurisdiction of the United States.

The jurisdiction of this Court to review, by Writ of Certiorari, the Decree and Order complained of is conferred by 28 U. S. C. Sections 1254 (1) and 2101 (c).

QUESTIONS PRESENTED

(1) Whether, under the statutory exception from liability provisions of the Carriage of Goods by Sea Act, a Court of Appeals may shift the statutory burden from cargo interests to carrier, misread both the District Court's opinion and the trial record and substitute its evaluation of the evidence for that of the District Court.

(2) Whether the Court of Appeals, in the absence of proof as to the cause of a fire on board a ship, may send a case back to the District Court for further proceedings.

(3) Whether, based on the record rather than on Speculation, the findings of the District Court were clearly erroneous warranting a reversal by the Court of Appeals and a remand to the District Court.

(4) Whether the Court of Appeals may assume that the District Court, in reaching its conclusions, had overlooked evidence or incorrectly understood it when the record contains credible evidence supporting the District Court's conclusions.

STATUTES INVOLVED

These cases involve the interpretation of 46 U. S. C. Section 1304 (2) (b), (the fire exception section of the Carriage of Goods by Sea Act) and 46 U. S. C. Section 182 (the fire statute).

§ 1304 Uncontrollable Causes of Loss

(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
- - * * *

(b) Fire, unless caused by the actual fault or privity of the carrier;"

§ 182 . . Loss by Fire. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner. (R. S. § 4282)"

STATEMENT

The Background

Black Diamond was the time charterer of the MV BLACK GULL, a Norwegian motor vessel, owned by Skibs A/S Jolund (referred to hereinafter as "the owner").

On July 18, 1952, while on a voyage from European ports to east coast United States ports, the vessel and its cargo, for all practical purposes, was completely destroyed by fire on the high seas and four crewmen lost their lives. The respondents in one action seek the recovery of the sum of approximately $3,000,000, representing the value of the cargo destroyed, and the other action herein constitutes a claim by the estate of a deceased seaman. In denying liability to cargo, Black Diamond admitted the non-delivery or delivery in bad order of the shipments and pleaded the exception from liability provisions of the Carriage of Goods by Sea Act as a complete defense. In the action brought on behalf of the seaman, Black Diamond denied liability on the ground that the loss of life was not the result of its negligence.[1] The trial lasted thirteen days during which time the District Court heard testimony from some sixteen

[1]Throughout this petition both cargo interests and the estate of the deceased seaman shall be referred to as "cargo" or "cargo interests".

live witnesses and the deposition testimony of an additional twenty-six witnesses and received into evidence approximately seventy exhibits. This District Court failed to find that the fire was caused by the negligence of the owner or Black Diamond and, therefore, dismissed the libels against Black Diamond and granted the owner's petition seeking exoneration from liability.

The Facts

The factual picture of the litigation has been drawn by the District Court in language, largely accepted and quoted by the Court of Appeals, as follows:

"There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952, bound for United States East coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

"The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This

passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

"On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

"Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

"During the voyage, the temperatures ranged from a high of 77° F to a low of 61° F. The last recording taken on the 4-8 p. m. watch on July 18th indicated a temperature of 72° F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only."

The District Court's Action

In its opinion after reciting the facts, the District Court stated that it was presented with two questions:

> "(1) If the fire was caused by spontaneous combustion, did any negligence of petitioner [the owner] or respondent [Black Diamond] cause the spontaneous combustion? (2) If the fire was caused by external ignition, did failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire?"

In resolving these questions the District Court held that cargo interests "have failed to sustain the burden of proof

that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion" and, even assuming "that a failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation," such failure to cover "could not have been a contributing cause of the fire." The Court then held "that there is no proof that the fire was caused by the negligence of either petitioner or respondent."

The Basis of the Reversal and the Errors Therein

In reversing the judgment of the District Court and remanding the actions against Black Diamond and the owner to the District Court for further proceedings, the Court of Appeals stated:—

> (a) ". . . it *seems probable* that the trial judge *misinterpreted* what [expert witnesses said]"
>
> (b) "*Apparently* the Judge overlooked the fact that [temperatures referred to in hypothetical questions were taken in the shade and were higher in the sun]"
>
> (c) "Another respect in which *it would appear* that the trial court *was led mistakenly* to conclude that failure to cover the bags of naphthalene could not have been a contributing cause of the fire was in its *failure to note* the substantial evidence [that a tarpaulin would protect naphthalene from fire]" (italics ours)

From the foregoing brief quotations, it is patent that the Court of Appeals, relying on appendices reproducing only portions of the record, and paying lip service to the *McAllister* doctrine,[2] concluded that the District Court was clearly erroneous, not on the basis of certainty but on the basis of appearances, apparent mistakes and assumed failures. But the record clearly supports each and every important finding of the District Court. It is apparent that on

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[2] *McAllister* v. *United States*, 348 U. S. 19.

cold printed portions of the record the Court of Appeals placed the District Court on trial, usurped its function and substituted a second guess for that of the Court which had heard the case, step by step, as it developed.

The Court of Appeals has reversed the trier of the facts, remanded the case with the constricting language of its opinion to the District Court and has broadly instructed the District Court to ignore the statutory law of the United States and to find Black Diamond and/or owners liable to cargo.

At this posture of the litigation, it is imperative that the errors of the Court of Appeals be pointed out to it before a District Court, constrained to accept the mandate of a higher court, takes further action and before Black Diamond is required to assume a burden of proof properly on the respondents and to expend considerable sums to make available for any further proceedings necessary witnesses to reemphasize testimony already in the Record. In the light of the lack of clear cut directives from an authoritative voice and the thoroughly confused status of the law resulting from the Court of Appeals' opinion, it is imperative that this Court hand down an authoritative opinion at this time. The determination of the rights and liabilities of many American and foreign ocean carriers so requires.

REASONS FOR THE ALLOWANCE OF THE WRIT

ARGUMENT

The Court of Appeals has shifted the statutory burden from cargo interests to carrier in its erroneous interpretation of statutes of vital interest to the entire shipping industry and in its inaccurate reading of the District Court's opinion and of the evidence in the record. It has substituted its own evaluation of the evidence for that of the District Court.

Although perhaps the District Court could have been more articulate in setting forth the basis of its conclusions,

its decision is in absolute accord with the controlling statutes and fully consistent with all prior judicial interpretations of both the fire exception clause of the Carriage of Goods by Sea Act and the fire exemption clause of the Limitation Statutes. See for example: *Consumers Import Co.* v. *Kabushiki Kaisha Kawasaki Zosenjo*, 320 U. S. 249; *Earle & Stoddard, Inc.* v. *Ellerman's Wilson Line, Ltd.*, 287 U. S. 420; *Isbrandtsen Co., Inc.* v. *United States (The Edmund Fanning)*, 201 F. (2d) 281, affirming in part, 105 F. Supp. 353; *A/S J. Ludwig Mowinckels Rederi* v. *Accinanto, Ltd.*, 199 F. (2d) 134, *cert. den'd*, 345 U. S. 992. A carrier and shipowner are not liable to cargo interests unless and until cargo owners have proven that the fire was caused by "the design or neglect" of the owner or "the actual fault or privity of the carrier". That the two statutes have the same purpose and place the same burden on cargo has been decided in *Automobile Insurance Co.* v. *United Fruit Co.*, 224 F. (2d) 72, *cert. den'd.*, 350 U. S. 885, wherein it was also stated that since 1851 there has been no indication of congressional intent to relieve cargo interests of that burden.

That the Court of Appeals incorrectly read the District Court's opinion is clearly evident in two very important instances:

a) The Court of Appeals stated that "apparently the Judge overlooked the fact that these temperatures [i.e. those set forth in the vessel's log book] stated in the hypothetical question were taken inside the chart room on the bridge and in the shade." But the District Court's opinion stated the log book temperatures and continued: "These temperatures were taken on the bridge and therefore indicated the temperature in the shade only." And the District Court's Finding of Facts No. 20, after stating the log book temperatures, concluded: "These temperatures were taken on the bridge in the shade."

b) The Court of Appeals continued its error on the subject of temperature by stating that the important temperature was that "in the area of the stow *found to be* in excess of 120° F. at which time, *the* [*district*] *court's opinion says* 'the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt.'" The District Court had actually said: *"Libellants' argument * * * runs something like this * * ** Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial quantity of gases which impregnated the bagging [etc.] ** * * * From these allegations libelants argue * * * * I cannot accept libelants' contention."* The District Court's statement of libelants' argument is not a finding but the Court of Appeals accepted it as such.

That the Court of Appeals erroneously read or *failed to read* the Record is obvious from the following statement in its opinion:

> "The (District) Judge's theory, there disclosed [i.e. Findings of Fact 30-34[3]], is that if the stow

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[3]The District Court's Findings of Fact referred to by the Court of Appeals are as follows:

> "30. Tarpaulins are inflammable.
>
> "31. Coverage of the stow of bagged naphthalene with a tarpaulin would not have prevented the fire on the "Black Gull".
>
> "32. A tarpaulin coverage would not have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have afforded protection only if the creosote oil or gases could not impregnate the tarpaulin or if the tarpaulin itself was not inflammable. Neither is the fact.
>
> "33. The gases given off by crude naphthalene would permeate or saturate tarpaulins which covered bagged naphthalene.
>
> "34. Creosote oil from the crude naphthalene and the gases given off by the crude naphthalene could have impregnated a tarpaulin covering bagged crude naphthalene and would thereby make the tarpaulin as inflammable as the impregnated bagging."

had been covered by a tarpaulin, the gases and the creosote oil given off by the crude naphthalene would have impregnated the tarpaulin or saturated it and made it as inflammable as the impregnated bagging. *There is no such evidence in the record.*" (Italics ours)

The District Court's acceptance of the fact that crude naphthalene would impregnate tarpaulins used to cover it flows directly from evidence adduced by cargo interests' proctor. Captain Anderson, master of the BLACK GULL, being cross-examined by cargo, testified as follows (R., p. 969, Lib. App., p. 319a, Pet. App., p. A. 370):[4]

"Q. You knew, did you not, Captain, that if tarpaulins were used in connection with the stowage of naphthalene that they would become impregnated with the odor of naphthalene?

"A. Yes, with the odor of naphthalene."

Captain Lohse, Black Diamond's operations manager, being cross-examined by cargo, testified as follows (R., p. 1078):

"Q. You knew, did you not, that this commodity naphthalene would impermeate either tarpaulins or rope slings to which they were connected?

"A. Yes."

The same witness, being cross-examined by the Owner, testified as follows (R., p. 1084, Res. App., p. 43a):

"Q. Captain Lohse, you have stated that the tarpaulins used to cover naphthalene would become impregnated, if I recall Mr. Longley's words correctly, with the smell of naphthalene, is that correct?

"A. Yes."

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[4]Throughout, references to the typewritten transcript of the trial minutes are referred to as "R. p. "; to cargo respondent's printed appendix as "Lib. App. p. "; to owners' printed appendix as "Pet. App., p. " to Black Diamond's printed appendix as "Res. App., p. ".

That naphthalene impregnated tarpaulins are as inflammable as naphthalene impregnated bagging is supported by the following:

Captain Hollaar, Black Diamond's European manager, in redirect examination by Black Diamond, testified as follows (R., p. 1173-1174, Res. App., p. 73a, 74a):

> "Q. Captain Hollaar, it has been suggested by Mr. Longley if the tarpaulin were put over the stow of naphthalene it would become, to use his words, permeated with naphthalene. Captain, in your opinion, would a tarpaulin which had become permeated with naphthalene be about as inflammable, more inflammable or less inflammable, than burlap bags?
>
> "A. Well, if it had become permeated with naphthalene of course it would be in practically the same condition as the jute bags."

In recross-examination by cargo, the same witness testified:

> "Q. Captain, are you seriously telling us as an experienced mariner that a tarpaulin is as readily ignitable as a burlap bag?
>
> "A. If it was impregnated with naphthalene, I do not see any difference."

Obviously, with the burden of proof upon cargo interests and in the light of cargo interests admission of the well known fact that tarpaulins "would become impregnated with the odor of naphthalene", and that "naphthalene would impermeate either tarpaulins or rope slings", no buttressing testimony was required or offered by Black Diamond. No evidence attempting to controvert the fact that naphthalene permeates tarpaulins, waterproof or otherwise, is found in the Record.

The semantic justification for a distinction between permeation by naphthalene and permeation by the *smell* or

odor of naphthalene set forth in the Court of Appeals' denial of the petition for rehearing falls by reason of nature. The physical fact that the smell of naphthalene requires the presence of naphthalene in the object from which the odor emanates is basic. This commodity sublimates and its odor is proof of its presence in a gaseous or solid state.

Further evidence of the Court of Appeals failure to read the Record or of its substitution of its evaluation of testimony for that of the District Court is evident from its apparent conclusion, based upon a quotation from Doctor Aeby's book "Dangerous Goods," that the flash point of naphthalene is 125° F. Both Doctor Aeby, a chemical expert called by cargo interests and the third edition of his book support this conclusion.[5] But Doctor Snell, another chemical expert called by cargo, testified that *pure* naphthalene has a flash point just about at its melting point which varies from 175° F. to 190° F. and that *crude* naphthalene has a flash point "slightly less" (R., p. 416-417). Doctor Purdy, a chemist called by Black Diamond, testified that the flash point of crude naphthalene on which he had conducted experiments ran from 199.4° F. to 201.2° F. He hastened to add that these figures were higher than those generally stated in chemical literature (R. 1268), United States Bureau of Mines giving the figure of 168.8° F. and United States Coast Guard giving the melting point of "about 175° F."

Based upon the conflict of testimony between the two experts called by cargo—one substantially agrees with the testimony of Doctor Purdy and data from official United States government publications—the District Court was fully justified in not concluding that the flash point of crude naphthalene was close enough to the temperatures—

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[5]But Aeby, Dangerous Goods (2d ed., 1922) p. 190 lists the flash or "inflammable" point of naphthalene as 176° F., in substantial agreement with other texts and expert opinion.

in sun or shade—encountered on the BLACK GULL's last voyage to constitute a danger.

Taking into account the testimony referred to above, the testimony that Black Diamond had carried this commodity similarly stowed on over 800 voyages, that other carriers stow it substantially in the same manner, that a court appointed Nautical Expert in Antwerp examined and approved the stow of naphthalene at that port, the findings and holdings of the District Court were fully supported.

Since the statutory exception from liability provision requires cargo to prove that the fire loss was "caused by the actual fault . . . of the carrier"—and there being no proof in the record as to the cause of the fire—the Court of Appeals was in error in reversing the District Court and remanding the actions for further proceedings.

> "If the proof leaves the origin of the fire purely a matter of speculation, the Fire Statute prevents a recovery by the cargo owners. Charbonier v. United States, D. C., 45 F. 2d 166, 170; Hoskyn & Co. v. Silver Line (The Silvercypress), 2 Cir., 143 F. 2d 462" *Connell Bros. Co. Ltd.* v. *Sevenseas Trading & Steamship Co., S. A.*, 111 F. Supp. 227, 229, *reversed in part* 220 F. 2d 511.

If failure to cover the stow of naphthalene, as suggested by cargo, constituted negligence on the part of Black Diamond and the owners—and without deciding, the District Court assumed that it was—it was still incumbent upon the cargo interests to prove the cause of the fire. Proof of negligence is not proof that that negligence caused the fire.

Cargo interests in its opening statement to the District Court admitted that it did not know what caused the fire:

> "I assume no evidence will be offered—not by us, in any event—as to whether it was a lighted

> match or a cigar or cigarette butt carelessly thrown into this stow by the passengers or by the crew which started the fire, or whether it was a spark from the funnel. It was one of those things——" (R. p. 16, Res. App. p. 1a)

No theory was suggested there nor throughout the trial by cargo interests that the sun caused or contributed to the fire. Yet the Court of Appeals has directed the District Court to answer the question.

> "Was it negligent to fail to cover the cargo from the sun?"

Whether it was a cigar or cigarette butt carelessly tossed by a passenger or a spark from the vessel's funnel as suggested by cargo in its opening statement, the sun's rays as suggested by the Court of Appeals, spontaneous combustion suggested as a possibility by Black Diamond's expert chemist or a cause which has not occurred to the mind of anyone, presents a question which cannot be answered from the evidence. Quite properly therefore, the District Court—not knowing the cause of the fire—concluded that "there is no proof that the fire was caused by the negligence of either petitioner or respondent."

As was said in *Automobile Insurance Company* v. *United Fruit Company*, 224 F2d 72, 74—leading case in this Circuit decided by this Court of Appeals in June 1955:

> "The question here is not whether the evidence would support an inference [as to the cause of the fire] * * * The question is whether the proof compelled such an inference."

Reasonable consistency in interpreting statutes governing an industry's rights and liabilities is essential to justice.

CONCLUSION

For the reasons set forth herein and the need for an authoritative clarification of the exception from liability provisions of a statute which effects the day to day operation and freight rates of every ocean carrier, we submit that this petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL L. STONEBRIDGE

Of Counsel:

WILBUR E. DOW, JR.

Second Amended Memorandum

#366

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V Black Gull, on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the Black Gull. The second and third cases are suits for non-delivery of and damage to the cargo which was on board the Black Gull at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steamship Corp., was the time charterer of the Black Gull and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libellants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952,

bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulkwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulkwards and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At About eleven o'clock, the deck officer, standing in the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77°F to a low of 61°F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72°F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that is was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They futher allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontanous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the

fire lends credibility to the possibility of spontaneous combustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends futher strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the Black Gull, spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might

have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from recovery. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72, supra.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the fire? I will discuss these questions separately.

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit

spontaneous combustion and, at one and the same time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelants' argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120°F, the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom

libelants assert to be "the leading European authority on dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the cresote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Neverless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care of which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the Black Gull did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that as soon as the severity of the fire was discovered the port lifeboat should have been lowered in order to prevent its destruction. In addition, they claim that the starboard lifeboat, after they were in it, was kept moored to the Black Gull and that this resulted in scorching which in turn forced them into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat close to the burning vessel.

As a matter of fact it was not proved that keeping the lifeboat moored to the vessel resulted in the scorching and submersion. The starboard lifeboat, with the passengers in it, was let down from its davits on the midships building. It was then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side and the boat was shipping water. At the same time water from the fire hoses was running through the scuppers on deck down into the boat. The second officer, who was in the boat, cut the painter which moored the boat to the vessel and the members of the crew in the boat tried to get the boat clear of the ship's side. The ship had headway, however, and they were unable to get the boat far enough from it before the boat got abreast of the fire at number 4 hatch to avoid the scorching of the heat. The second officer therefore ordered all to go overboard on the lee side of the boat and hang onto the lifeline. After the boat passed number 4 hatch they all got into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew thereafter jumped overboard from the ship and were picked up. Then all the rest of the crew, except the four who lost their lives, came aboard from the vessel. All in the boat were rescued by the Gripsholm.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. Since the boat had to be kept available it was natural to

keep it moored until it appeared that the sea against the side of the vessel and the water from the scuppers were filling it. There is no suggestion that the cutting of the painter was negligent or that the failure to get far enough from the ship to avoid scorching as the boat passed number 4 hatch was negligent. Since passenger libellants' criticism is that the boat was kept moored, their position must be that it was negligent to moor the boat to the ship until it appeared that the boat was in danger of filling instead of trying to get clear of the ship as soon as the boat was in the water. There is, however, no reason to believe that, if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. No attempt was made to show that the fire was any hotter when the boat finally passed it than when the boat was first launched.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

Dated: July 23, 1956

E. J. DIMOCK
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 353—October Term, 1956.

POPE, *Circuit Judge*:

The proceedings in the court below grew out of a fire which occurred on the Norwegian M/S Black Gull on July 18, 1952, while she was on a voyage from North European ports to New York. Four members of the crew lost their lives; most of the cargo was either destroyed or damaged, and the vessel became a constructive total loss. These proceedings were three in number: the first was one for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the Black Gull; the second was a suit for non-delivery of and damage to the cargo which was on board at the time of the fire (the libelants in that suit are the owners or underwriters of the cargo, and the respondent was Black Diamond Steamship Co., time charterer of the Black Gull, on its own behalf and on behalf of the Master); and the third proceeding was one to recover for the wrongful death of one of the lost seamen brought by his widow and children against the Black Diamond Steamship Corp.

The facts leading up to the fire and the loss are set forth in the second amended memorandum of the trial judge, as follows: "The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel

on this voyage was manned by a crew of forty and carried nine passengers.

"The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

"On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as 'a hollow dull dump' from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

"Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered."

The libel of the cargo owners against Black Diamond Steamship Corp. (here called Black Diamond), after referring to the shipments, and bills of lading therefor, al-

leged: "The shipments described on Schedule 'B' either have not been delivered at all to the persons entitled thereto or have been delivered to them short, slack and seriously injured and damaged, and such parts of said shipments as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading."

Black Diamond asserted non-liability under the Carriage of Goods by Sea Act (U. S. C. Title 46, §1304(2)), which provides that the carrier shall not be responsible for loss or damage from fire "unless caused by the actual fault or privity of the carrier." These cargo owners, appellants here, claim there was fault or negligence on the part of Black Diamond's managing agents, in failing to protect or cover the deck stow of bagged naphthalene from the direct rays of the sun so as to avoid heating and to protect from the foreseeable possibility of ignition from sources such as sparks, lighted cigarettes or cigar butts.

The court made no finding as to whether Black Diamond was guilty of negligence in these respects for it held that any failure to cover the bags of naphthalene could not have been a contributing cause of the fire; that coverage of the stow would not have prevented the fire. In its Finding 36, that there was lack of proof that any such failure to cover the stow was a proximate cause of the fire, the court said: "Even if it be assumed that failure to cover the stow of bagged naphthalene with a tarpaulin was either negligence or in violation of controlling statute or regulation, libellants have not proved that that failure was a proximate cause of the fire." Its key findings as to lack of causation are its Nos. 29 and 35, as follows: "29. The sun's rays could not have caused or contributed to the cause of the fire." "35. The failure to cover the bags of naphthalene on the 'Black Gull' with a tarpaulin was not and could not have been a contributing cause of the fire."

Findings 30 to 34 inclusive were evidently intended to be explanatory of one reason for the court's finding of lack of proof of causation,[1] stated in the court's second amended memorandum as follows: "2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

"Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a

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[1]These are as follows: "30. Tarpaulins are inflammable.

"31. Coverage of the stow of bagged naphthalene with a tarpaulin would not have prevented the fire on the 'Black Gull.'

"32. A tarpaulin coverage would not have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have afforded protection only if the creosote oil or gases could not impregnate the tarpaulin or if the tarpaulin itself was not inflammable. Neither is the fact.

"33. The gases given off by crude naphthalene would permeate or saturate tarpaulins which covered bagged naphthalene.

"34. Creosote oil from the crude naphthalene and the gases given off by the crude naphthalene could have impregnated a tarpaulin covering bagged crude naphthalene and would thereby make the tarpaulin as inflammable as the impregnated bagging."

tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

"I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be 'the leading European authority on dangerous cargo,' unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

"Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence 'This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling.' Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging."

If we assume, as did the trial judge, that the failure to cover the stow was negligence, it is our opinion that the quoted findings to the effect that the failure to cover the naphthalene could not have been a contributing cause of the fire, were clearly erroneous. Noting the court's reference, in the portion of the opinion last quoted, to the testimony of Dr. Purdy and Dr. Aeby, it seems probable that the trial judge misinterpreted what they said. In the quoted portion of the opinion the court found that the temperature in the area of the stow was in excess of 120° F. Dr. Aeby, testifying on deposition as an expert witness for the cargo owners, stated that even at 70° to 75° F.

particles of naphthalene gas would be liberated into the air, and (as the court found), that "as the temperature rises naphthalene gives off increasing amounts of gas"; and that those gas particles which are given off will ignite at a temperature of approximately 125° F. which is the "flash" point of pure naphthalene.[2]

It is true that in answer to a hypothetical question reciting the temperatures recorded in the log book on the vessel during the period of July 11 through July 18 (the day on which the fire broke out), Dr. Aeby testified that, based on an assumption of certain named maximum temperatures, it would be his opinion that the rays of the sun could not have been a cause or contributing cause of the fire. But these named temperatures were immaterial. Apparently the Judge overlooked the fact that these temperatures stated in the hypothetical question were taken inside the chart room on the bridge and in the shade. The highest temperature taken there was 25° centigrade or 77° F. recorded at noon on July 18 (the day of the fire). That was not the important temperature;—the important one was the temperature in the area of the stow found to be in excess of 120° F. at which time, the court's opinion says, "the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt."

Both Dr. Aeby and Dr. Purdy (who was Black Diamond's expert), testified that the temperature on the deck which was exposed to the sun would be much higher than that on the bridge in the shade. Dr. Purdy also testified that the quantity of gas given off would be increasingly greater as the temperature rose; and that in his opinion there was no possibility that the sun's rays would raise the temperature

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[2]Dr. Snell, an expert testifying for libellants, stated that the flash point of crude naphthalene was "somewhat lower" than that of pure naphthalene. Dr. Aeby said he could not tell the precise flash point of this crude naphthalene without testing the particular product.

to the point where the gas would ignite. But it is noted that it is not the theory of the appellants that the gas would ignite because of the heat alone. Dr. Purdy's testimony seems to mean that the temperature where the cargo was stored was never high enough to cause it to burst into flame unaided by an ignited flame. This does not sustain a conclusion that the sun's rays could not have "contributed to the cause of the fire."

The record shows that the rays of the sun increased the heat of the deck cargo and as the heat increased the amount of gas released became greater and greater. The recorded bridge temperatures indicated that the hottest day was the day the fire broke out; as shown in the court's opinion, the temperature at this point exceeded 120° F. The gas would, according to the testimony of Capt. Hollaar, Black Diamond's marine superintendent, mix with the air and form an explosive mixture. Plainly enough such gas was a dangerous substance, and in view of the likelihood of ignition by sparks, burning cigarettes or cigars, the production of excess quantities of the gas could well be the proximate cause of the fire.

Another respect in which it would appear that the trial court was led mistakenly to conclude that failure to cover the bags of naphthalene could not have been a contributing cause of the fire was in its failure to note the substantial evidence in the record that a tarpaulin coverage would have afforded protection from ignition. The trial court's views with respect to the efficacy of a tarpaulin are expressed in its findings, Nos. 30-34 inclusive, set forth in footnote 1, *supra*. They are also expressed in the last paragraph of the portion of the opinion which we have quoted above. The Judge's theory, there disclosed, is that if the stow had been covered by a tarpaulin, the gases and the creosote oil given off by the crude naphthalene would have impregnated the tarpaulin or saturated it and made it as inflam-

mable as the impregnated bagging. There is no such evidence in the record.

Evidently the trial judge thought that libelant's exhibit 38 tended to support his view that the gases and oil would permeate a tarpaulin used to cover the bagged naphthalene; but exhibit 38 has no reference to a tarpaulin so used. It is a directive addressed by Black Diamond to all masters and mates and dated March 30, 1933. Assuming that the fact that the libelant introduced this exhibit takes away from it its self-serving character, it refers not to tarpaulins used to cover a stow of naphthalene but it is a directive against stowing naphthalene on hatches.[3] If naphthalene were piled on a hatch or hatch cover which in turn was covered by a tarpaulin, the likelihood of the creosote oil under the pressure of the pile permeating the tarpaulin could readily be conceded without its having any bearing whatever on what would happen to a tarpaulin which was used to cover a stow of bagged naphthalene. The law of gravity makes the difference.

With respect to tarpaulins used for covers, there was evidence to the effect that they would serve the purpose of aiding in preventing fire. Dr. Snell, an expert called by libelants, testified that tar had not been used in water proofing of tarpaulins for generations; that in modern times the cloth of a tarpaulin is treated with chlorinated paraffine which serves the purpose of both waterproofing and flameproofing. Capt. Hollaar testified that tarpaulins used on Black Diamond's ships were impregnated with material to make them watertight. There is no evidence in the record that gas would permeate a watertight tarpaulin. Capt.

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[3]The communication stated in exhibit 38 read as follows: "TO ALL MASTERS & MATES: *'NAPHTHALENE'* Under no circumstances is naphthalene to be stowed on hatches. This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling. This commodity therefore is to be stowed on steel decks only."

Hollaar testified further that if the outside source of ignition were a cigar or cigarette butt, it would be much less likely to ignite the stow if it were covered by tarpaulin than if the stow were uncovered. Perhaps the most persuasive proof that the trial court must have been mistaken in its belief that covering the stow with a tarpaulin would be wholly ineffective to prevent fire, is furnished by the regulations of the United States Coast Guard. Under those regulations naphthalene, crude or refined, is classified as a hazardous article, and its stowage is required to be under cover.[4]

Regulation 146.27-6 provides as follows: "Protection for 'on deck' stowage.—Hazardous articles that are permitted stowage 'on deck in open' or 'on deck protected' may be protected by the use of structural erections, awnings, or tarpaulins."

Regulation 146.03-34 recites that under the regulations stowage terms are defined as follows: "(b) On deck protected means the articles may be stowed on the open weather deck of a vessel. It is required that dangerous cargo stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnaging."

It seems to us significant that in the Coast Guard regulations tarpaulins are an approved method of protection for hazardous articles with no suggestion whatever that they are not suitable for protection of bagged naphthalene.[5]

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[4]These regulations provide under the heading of "Required Conditions for Transportation" with respect to naphthalene and on a cargo vessel as follows: "Stowage: 'On deck protected.' 'On deck under cover.' 'Tween decks readily accessible.' 'Under deck (in a cool, dry, well ventilated hold).'"

[5]In its findings the court ignores the regulations' reference to "structural erections" and "awnings." Some witnesses for the owner and for Black Diamond testified that in their view those would be impractical because they would be carried away in storms. One who testified that awnings were impractical was a Capt. Tang, an employee

We hold therefore that this case cannot be disposed of on the basis of the court's erroneous finding that there was no proof of proximate causation. This means that the trial court should have made findings upon the question of whether there was negligence on the part of Black Diamond in the respect claimed by the appellants, namely, the failure to cover the cargo to protect it from the sun and from outside ignition.

Of course to charge Black Diamond with negligence sufficient to establish liability, it must appear that the negligence was with "the actual fault or privity of the carrier." If the failure to cover the cargo here was negligence, it was plain that "that of an executive officer, manager or superintendent whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred."[6]

Capt. Hollaar, who did not hesitate to assume full responsibility for the way in which the bagged naphthalene was stowed, was a supervisory and executive official in this sense. He had general supervision over all matters relating to the loading of ships for Black Diamond in the ports

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of another steamship company. This is the same witness who essayed an interpretation of the Coast Guard regulations by stating that it was his view that the words "on deck protected" meant "protected against the sea, to be lost overboard, the bags torn open, or the cargo scattered." He said that this protection was afforded by the "forecastle head, bulwark and hatch coamings." The Captain's interpretation of the Coast Guard regulations was plainly in direct conflict with the express language of the regulations quoted above. Capt. Hollaar had no such understanding as had Capt. Tang, for he testified as follows: "Q. And you knew that under the Coast Guard regulations of the United States if carried on deck it must be under a cover or protected by awnings or tarpaulins A. I knew that the Coast Guard regulations read that way. Q. You knew that the naphthalene on 'Black Gull' was not so covered? A. Yes.

[6]The quoted language is from *Coryell* v. *Phipps*, 317 U. S. 406, 410. The court was there discussing the meaning of the phrase; "privity or knowledge" in connection with a limitation of liability proceeding. The same test is applicable here.

of Hamburg, Bremen, Rotterdam and Antwerp. He was the company's European marine superintendent. As the court found, he was "in complete charge of all matters of stowage on vessels under charter to respondent and had no superior in Europe." There is no contention that Capt. Hollaar was not Black Diamond's alter ego in Europe, or that he was not performing with authority duties of a managerial nature. Cf. *The Edmund Fanning,* S. D. N. Y., 105 F. Supp. 353, 364, 369, affirmed on this point, 201 F. 2d 281, 284.

Capt. Hollaar participated in the preparation of the loading plan for the Black Gull before her departure; he knew that she was to carry naphthalene which was to be loaded on deck; he saw it when loaded, and saw that it was not covered. He knew that the naphthalene was volatile; that gas would escape and that when mixed with air it could form an explosive mixture; that naphthalene was classified as hazardous cargo; and he had read many handbooks on dangerous cargoes including that of Dr. Aeby. This book, a standard authority on the topic, described and classified various types of dangerous goods, that is, those defined in the book as "those which of themselves or by reason of chance circumstances may give rise to difficulties or cause accidents during transport by boat." The book stated that "By inflammable, * * * we understand a substance which at a more or less high temperature, gives off such gases as, in the presence of a naked flame, ignite or explode. The temperature at which this phenomenon occurs is called 'flashing point' or 'flash point' and is determined by the Abel-Pensky apparatus." The author then lists the flash points of some 38 chemical compounds in which appears "naphthalene—125° F." The book contains recommendations for packing and stowage of various kinds of goods and under the head of naphthalene the recommended stowage is stated as follows: "Stowage: On deck, covered and protected from the rays of the sun or under deck, in a cool and well-ventilated compartment, away from living

quarters and foodstuffs." Capt. Hollaar also acknowledged familiarity with the regulations of the U. S. Coast Guard relating to dangerous articles on board vessels to which we have previously referred.

There was also evidence of a Dutch shipping decree in effect when this vessel left Rotterdam which contained a regulation relating to the stowage of naphthalene on board ship reciting that such stowage should be "On deck protected from the sun's rays; or below deck in a well-ventilated, dry hold, in a cool place." We note also that the same Dutch regulation provided: "Open fires and smoking near a cargo of naphthalene must be prohibited."

This reference to smoking suggests that which requires no specific evidence, namely, that in the circumstances of this case, the likelihood of ignition of the gas by a spark from the stack or burning cigarettes or cigar butts was foreseeable.[7] The foreseeability of such an occurrence is evidenced not only by the fact of the making of the quoted provision concerning smoking in the Dutch regulations, but it is a matter of common knowledge that where smoking goes on the smokers are likely to throw away burning cigarettes or cigars. One cannot drive through a national or state forest without being reminded by road signs of this common fact of life. The court found that certain of the passengers smoked on the voyage, as did certain of the officers and crew. It found that the passengers smoked on the weather deck, the boat deck, the sun deck and the bridge deck.[8] Some of the passengers smoked on the boat

[7]Dr. Snell stated that the bagged naphthalene itself might be ignited directly from a cigarette. His theory was that since a burning cigarette produces a temperature of at least 500° F., and naphthalene melts at 174° F., if a cigarette fell on a bag the naphthalene would melt and be absorbed by the bagging material, which would act like a wick in a candle, thus igniting the whole contents of the bag.

[8]There were five or six "No Smoking" signs, some of which were visible from the boat deck, and in the cabins were signs warning against throwing cigars or cigarettes out of port holes, or over the side.

deck after dinner on the evening on which the fire started. Some of the crew smoked on the main deck. It was also found that there were no receptacles on any of the decks for burnt cigars, cigarettes or matches. The uncovered stow of the naphthalene aft the court found extended to within approximately 6 feet of the boat deck.

Without making any finding as to whether the fire occurred through spontaneous combustion the court referred to it by finding that "there is a theoretical possibility of spontaneous ignition of the bags containing the naphthalene," and that "spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire." The court further found that pure naphthalene is not susceptible to spontaneous ignition, but that none of the bags in which it was packed had been tested for susceptibility to spontaneous ignition.

Appellants argue that the fire could not have resulted from spontaneous combustion. But even if there had been evidence of a possible spontaneous combustion, clearly enough the dangerous substance was the gas produced by the heat. Increased heat would increase the volume of gas and failure to protect the stow from the direct rays of the sun could well constitute a contributing cause of a fire from spontaneous combustion. Assuming that spontaneous combustion was possible, it would be foreseeable that a likelihood of that taking place would be increased as the heat and the gas increased. In other words, the danger was foreseeable whether it came about through sparks, cigarettes or spontaneous combustion.

The cause must therefore be remanded for further findings on two issues:

(1) Was it negligent to fail to cover the cargo from the sun?

(2) If so, was the negligence the cause of the damage?

In passing upon the question of negligence, it is not important that the vessel had not entered United States waters when the fire occurred so that Coast Guard regulations had not then become operative as a controlling or binding statute. The court can consider these and the Dutch regulations as a norm or standard of care. With these the court may consider such facts of common knowledge as the tendency of smokers to throw away lighted butts; the fact that the wind blowing across the boat deck on the day the fire occurred would tend to carry a tossed cigarette in the direction of the bagged naphthalene; that the direct rays of the sun cause heat, and in a confined area out of the wind, the heat tends to increase further. The court may consider the feasibility of precautions, such as covering with tarpaulin, or the furnishing of what the Coast Guard regulations describe as "structural erections," or "awnings." We cannot say that there are no other feasible methods for protecting cargo from the sun. Some of Black Diamond's witnesses objected to tarpaulin covers as likely to hold and trap the gas from the naphthalene. We cannot say as a matter of law on this record that a tarpaulin over the top, but not over the sides of the cargo would not be feasible. This gas is heavier than air. Some of the same witnesses testified that many cargo carriers stowed naphthalene in the same manner here employed.* Proof of trade practice is not proof of what constitutes due care in the premises, nor is the utilization of reasonably required safety devices excused merely because they involve additional expense.

On the question of causation the court may find that the increased amount of gas generated by the sun's heat was

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*Although Capt. Hollaar testified that Black Diamond's practice was to carry crude naphthalene on deck uncovered, he recalled instances in which such cargo had been covered on the insistence of the shippers. It also appeared that competition had compelled Black Diamond to accept shipments of naphthalene for "under deck" stowage.

confined to the top layer of burlap bags and was rapidly dissipated by the wind, so that it was not a cause of disaster, or it may find that the sun heated the bags despite the breeze. Failure to negative completely the possibility of spontaneous combustion does not prevent recovery here if it is shown that the catastrophe was in fact caused by negligent failure to protect the cargo from the sun. Whether the spark that triggered the fire was spontaneous or from a cigarette, the liability of the persons responsible for failing to keep the sun off is the same.

The Verbeeck Case Against Black Diamond

Verbeecks' libel bases its claim for recovery against Black Diamond for the death of this Belgian seaman on the provisions of the Death on the High Seas Act, Title 46, §§ 761-768, which provides a cause of action for death "caused by wrongful act, neglect, or default occurring on the high seas."[10] It was stipulated that under the law of Norway a similar right of action for death by wrongful act is granted the widow, children and other dependents of a Belgian seaman employed on a Norwegian ship.

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[10] "§ 761. Right of action; where and by whom brought—Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued."

"§ 764. Rights of action given by laws of foreign countries—Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding."

What we have said above with respect to the sufficiency of the proof of negligence and of the proximate cause of the fire makes it necessary that on Verbeecks' appeal from the decree dismissing their libel against Black Diamond the cause be remanded for findings on those questions.[11]

The Appeals From the Decree Exonerating Skibs A/S Jolund

The decree granting exoneration to the owner of the vessel is challenged by three groups of appellants: the cargo owners, the seven passenger appellants, and the Verbeecks.

As for the cargo owners, the controlling enactment is the Fire Statute, Title 46 U. S. C. § 182,[12] which provides the owner exemption from liability for loss to cargo by fire "unless such fire is caused by the design or neglect of such owner." These appellants assert that such "design or neglect" was established here by proof that one Capt. Svendsen was a managing officer representing the owners and whose scope of authority included supervision over the phase of business out of which the loss or injury occurred, within the meaning of *Coryell* v. *Phipps, supra*. The owner was a Norwegian corporation and all matters pertaining to the management and maintenance of the vessel were in the hands of Sigurd Herlofsen & Co., also a Norwegian corporation, as manager for the owner. As the court found,

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[11]We are not required by this record to pass upon the question whether, as concerns Verbeecks' case against Black Diamond, the latter might be chargeable with negligence on the part of the ship's officers in failing to prevent smoking by passengers.

[12]"§ 182. Loss by fire. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

the entire management of the ship was entrusted to the latter corporation. Capt. Svendsen was employed by Sigurd Herlofsen & Co. He states in his deposition that he became head of the Marine Department of Sigurd Herlofsen & Co. on January 6, 1954; but in June and July, 1952, when the fire occurred, he had not been appointed to this position. In response to an inquiry as to where he was then employed by the employing corporation, he replied, "I was in the Marine Department in the office in Oslo." At that time the head of the Marine Department was a Captain Wellton. Capt. Svendsen testified: "I just had the work given to me by Capt. Wellton. For instance, I might be sent out on a ship as a captain, or anything that he thought he needed me for." He said that he knew that ships under charter to Black Diamond carried cargoes of naphthalene in that fashion; but he had never discussed with any officer of Sigurd Herlofsen & Co. the manner of stowage on the Black Gull or any other vessel chartered to Black Diamond.

The only finding made by the trial court concerning Capt. Svendsen was its finding No. 70 as follows: "At and before the time of the voyage here involved, it was personally known to Capt. Inge Svendsen, who assisted the head of the Marine Department of S. Herlofsen & Co., which managed the 'Black Gull' for petitioner, that respondent customarily carried bagged naphthalene on deck on vessels which it chartered from petitioner, covered only by manila rope netting." No doubt, because of its findings that there was lack of proof of causation of the fire, the trial court considered it unnecessary to make a specific finding as to whether Capt. Svendsen was an executive officer, manager or agent.

In the case of *Consumers Company* v. *Kabushiki Kaisha*, 320 U. S. 249, the negligence to which the loss of cargo by fire was attributable, was that of one Captain Fagen who had been employed to supervise stowage on the ship in

question. (The facts were discussed at length when the case was in this court, 133 F. 2d 781.) But in that case the trial court had found that Captain Fagen's "authority, however, was limited to supervision of meal stowage for the K Line at Kobe and to the giving of instructions to the masters with reference to such stowage. He was not a marine superintendent, general agent or managing officer of the K Line." *The Venice Maru,* 39 F. Supp. 349, 352.

While the court below might well upon the record here have made a similar finding with respect to Capt. Svendsen, it did not do so. The court's conclusion of law No. 7 was as follows: "The fire was not caused by the design or neglect of the petitioner and the Fire Statute is a complete defense as to all claims for cargo loss or damage." This conclusion appears to be based upon the trial court's findings that there was no proof that the fire was caused by any neglect or negligence whatever. Admiralty Rule 46½ contemplates that the findings of fact and the conclusions of law shall be stated separately.[13] If the court intended its conclusion No. 7 to be a finding of fact that the representative of the owner charged with negligence was not of managerial rank, it did not say so. The conclusion, as worded, is susceptible of interpretation as having been predicated solely on findings of a lack of causation.

For reasons previously stated in discussing the question of Black Diamond's liability, we hold that there was evidence from which the court might have found that the fire was caused by negligence in the manner of stowage of naphthalene and the failure to cover it. Should the court find, as did the court in *The Venice Maru, supra,* that Capt. Svendsen was not a general agent or managing officer, then the owner will be entitled to exoneration as against

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[13] "In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; * * *"

the cargo owners. Should the court find that Capt. Svendsen was a managing agent, then the court must determine whether any neglect or failure to act on his part constituted negligence, and if so, whether the same was a proximate cause of the loss.

With respect to the claims of passengers-appellants, the Fire Statute is inapplicable as it concerns loss or damage to merchandise only. The passengers are entitled to the benefit of the rule stated in Title 46 U. S. C. §183(e) as follows: "In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vesesl or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the Owner of such vessel."

Since 1949 the Captain had been acquainted with the American Coast Guard regulations and knew that they required that naphthalene when carried on deck should be covered. As one acquainted with the regulations he should have known that they classified naphthalene as a dangerous cargo.

As for the claim of Verbeecks against the owners, it is plain that they also are entitled to the benefits of §183(e) quoted above. The owner, differing from Black Diamond,[14] is entitled to the benefits of the Limitation of Liability Act, 46 U. S. C. §183, as against a claimant under the Death on the High Seas Act (*In Re Wood's petition* (2 Cir.), 230 F. 2d 197), which contains special provisions relating to claims for loss of life or bodily injury.

In view of what we have said heretofore concerning the claims of the passengers and the issues in the action of the

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[14]Which is not an "owner" within the meaning of the Act, Gilmore and Black, The Law of Admiralty, 1957, p. 673; Benedict, The Law of American Admiralty, 6th ed., §497.

Verbeecks against Black Diamond, it is apparent that the cause must be remanded for further findings respecting the issues as between the Verbeecks and Skibs A/S Jolund.

The decrees are reversed and the cause is remanded for further proceedings consistent with this opinion.

UNITED STATES COURT OF APPEALS

For the Second Circuit

On Petitions for Rehearing

POPE, *Circuit Judge:*

Upon petitions for rehearing appellees assert that our opinion is in error in stating that there was no evidence to support the trial judge's theory, based on Exhibit 38, that naphthalene "permeates tarpaulins and hatch boards," and that "the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging."[1] Appellees say there is credible uncontradicted evidence that the gases and oils would impregnate or saturate a tarpaulin and "make it as inflammable as the impregnated bagging."

Our opinion makes plain why we think the trial court misunderstood or misinterpreted Exhibit 38, and why we consider the findings drawn therefrom clearly erroneous. As for the contention of the petitions that there was other evidence to support the judge's view of Exhibit 38, we cannot so read the record. The witnesses whose testimony is listed by petitioners carefully avoided saying any such thing.[2] One said that *if* a tarpaulin became impregnated

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[1]"The Judge's theory, there disclosed, is that if the stow had been covered by a tarpaulin, the gases and the creosote oil given off by the crude naphthalene would have impregnated the tarpaulin or saturated it and made it as inflammable as the impregnated bagging. There is no such evidence in the record."

[2]Thus Black Diamond quotes Captain Hollaar's testimony as follows:

> "Q. Captain Hollaar, it has been suggested by Mr. Longley if the tarpaulin were put over the stow of naphthalene it would become, to use his words, permeated with naphthalene. Captain, in your opinion, would a tarpaulin which had become permeated with naphthalene be about as inflammable, more inflammable or less inflammable, than burlap bags? A. Well,

with *naphthalene* it would become inflammable. Others said if tarpaulins were used for cover they would be impregnated with the "odor" or "smell" of naphthalene. No testimony supported the court's theory, mistakenly deduced from Exhibit 38, that use of a tarpaulin as a cover would *"make the tarpaulin as inflammable as the impregnated bagging."* The trial court's theory was dependent upon this "as inflammable." If, as Capt. Hollaar testified, a cigarette or cigar butt "would be much less likely to ignite the stow if it were covered by tarpaulin than if the stow were uncovered," then the theory of lack of causation falls to the ground.

Again petitioners challenge our statement that the trial judge's opinion described the deck temperature as "in excess of 120° F." It says this was a mere recital of libelant's argument. We do not so read the judge's opinion. The finding as to bridge temperatures, in the shade, was irrelevant. The evidence in the record shows that the 120° F. which the judge took as being accurate, was in fact so. It was arrived at by adding to the 77° bridge temperature the 43% difference which Dr. Purdy testified would exist in the higher temperature on deck.

As for the petitions' statement that we misread the Coast Guard regulations as requiring tarpaulin covers, reference to the opinion will show we did not say that. In footnote 4 we listed the alternative "Required Conditions for Trans-

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if it had become permeated with naphthalene of course it would be in practically the same condition as the jute bags."

(On recross examination): "Q. Captain, are you seriously telling us as an experienced mariner that a tarpaulin is as readily ignitable as a burlap bag? A. If it was impregnated with naphthalene, I do not see any difference."

Thus the Captain carefully says: *If* the tarpaulin was impregnated with naphthalene it would be inflammable. No word from him says that a tarpaulin used to *cover* such a stow *would* become impregnated; much less that it would, as the judge seemed to think, become "as inflammable as the impregnated bagging."

portation." One of these is "on deck protected." Regulation 146.27-6 provides that this condition may be satisfied by the use of "structural erections, awnings, or tarpaulins." by underscoring the word "may" in the last sentence, petitioners argue this means such protections are merely permissive. This ignores the words "Required Conditions," and ignores the words "shall be protected" in Regulation 146.03-34(b) quoted in the opinion. But this is all beside the point. Libelants contended that the naphthalene might have been protected by covering with tarpaulin. Petitioners concede that the regulations say "hazardous articles *may* be protected by the use of a tarpaulin." The judge's finding was that the naphthalene *could not possibly* have been protected by such means. It is with this that we have mainly found fault.

As for the contention that the Dutch regulations, or portions thereof, were not in effect because not published, for our purposes it is of no consequence whether the Dutch regulations shown in the record had the force of Dutch law or not. Plainly they were drafted by officials who presumably knew their business. Our mention of them has not been for the purpose of disclosing any violation of any regulation having the force of law. Our reference was merely to show that like the Coast Guard regulations they represent an accepted standard of care.

The petitions for rehearing are denied.

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IN THE

Supreme Court of the United States

October Term, 1957
No. 800

In the Matter
of the
Petition of SKIBS A/S JOLUND, in a cause of exoneration from or limitation of liability for damages arising out of a fire on board the BLACK GULL on July 18, 1952.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ET AL.,
Respondents.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

MARIA ANGELINA VERBEECK, ET AL.,
Respondents.

REPLY OF PETITIONER, BLACK DIAMOND STEAMSHIP CORP., TO BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

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REPLY OF PETITIONER, BLACK DIAMOND STEAMSHIP CORP., TO BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

I

The opposition brief states that the petitions for certiorari appear premature and really constitute a request for a review of questions of fact which interest only parties to this litigation.

As is set forth in the petitions for certiorari, this litigation involves the scope of the authority of a Court of Appeals and the application of that authority to the cases in suit as well as the interpretation of portions of statutes of the United States not previously passed upon by this Court and inconsistently applied by the subject Court of Appeals in this and earlier decisions.

With respect the timeliness of these writs, it is basic that the District Court is bound by the mandate of the Court of Appeals and cannot deviate from the course of action directed by the higher court. The lower court, in these cases, must answer the questions posed by the Court of Appeals and, even though not bound by the dicta of the higher court, may well be greatly influenced by the erroneous evaluation and interpretation of the testimony and the burden of proof.

As was said by the Court of Appeals for the Eighth Circuit, in *Thornton* v. *Carter*, 109 F (2d) 316, 320:

> "After a case has been brought to this court and decided and a mandate has been issued to the court below, a second appeal brings up nothing for revision but the proceedings subsequent to the mandate; . . ."

Therefore, the *only opportunity* petitioners herein will ever have to correct the obvious errors of the Court of Appeals is in this Honorable Court and now. After further proceedings in the District Court—directed by the Court of

Appeals—and another appeal to that latter court, time will have run out and the erroneous rulings will be perpetuated as "the law of the case" and remain a misleading precedent.

II

Neither this District Court nor this petitioner, as stated in the opposition brief, suggest that rights of the estate of a deceased seaman to recover are governed by the Carriage of Goods by Sea Act. What the District Court found, and what this petitioner continues to maintain, is that the libelants below—both the cargo interests and the estate of the deceased seaman—have failed to prove the cause of the fire and, hence, have failed to prove that the loss of life and of cargo resulted from its negligence. Failure to prove cause was fatal to libelants below. The Court of Appeals is not justified in giving them a second shot.

Respectfully submitted,

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OCTOBER TERM, 1957

No. 800 & 815

In the Matter
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Respondents.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

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Respondents.

BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1957

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In the Matter

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BLACK DIAMOND STEAMSHIP CORP.,

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Respondents.

BRIEF IN OPPOSITION TO THE PETITIONS FOR A WRIT OF CERTIORARI

Skibs A/S Jolund, owner of the S. S. "Black Gull", and Black Diamond Steamship Corporation, the charterer of that vessel, have filed petitions for a Writ

of Certiorari. We shall consider the arguments set out in the respective petitions.

The decision of the Court of Appeals did not determine the present petitioners' liability or non-liability to the respondent cargo owners and death claimants. That Court held that certain findings of the District Judge are clearly wrong; and that these insupportable findings caused the District Judge to omit reaching any conclusion on the two most vital issues of the case: (1) Was it negligent to omit covering the dangerous deck load of napthalene; (2) If so, was the negligence the cause of the fire. The Court of Appeals thereupon directed the District Court to pass upon these two issues (23a)* and set out the principles which govern findings of negligence and proximate cause under the facts of this case (24a-25a).

To us the petitions for certiorari seem premature. Moreover, we shall point out *infra* that although the petitioners attempt to find an issue of law to present to this Court, they really are asking a review of questions of fact which interest only the parties to this litigation.

Petition of Black Diamond Steamship Corporation

We shall deal with the "Questions Presented" as they appear in the petition.

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* All references in parentheses are to the Appendix of the petition of Black Diamond Steamship Corporation.

Question 1

The question here advanced primarily relates to the burden of proof under the statutory exception from liability for fire provided by the Carriage of Goods By Sea Act (46 U. S. C. Sec. 1304 (2) (b)). The cargo owners admitted in the District Court and in the Court of Appeals that they have the burden of proving that the destruction by fire of their property resulted from the negligence of one or more of this petitioner's managing representatives. The Court of Appeals did not hold or suggest anything to the contrary, as is urged in the petition. The arguments which this petitioner advances as to the burden of proof (at p. 8 of the petition) and as to the necessity of a causal relationship between proven negligence and the fire (at p. 13), are without point for neither court below nor counsel has suggested anything to the contrary.

The Court of Appeals held that fire resulting from negligent omission of a protective covering over the dangerous deck cargo of napthalene would, on the uncontradicted evidence, result from negligence of one of this petitioner's managing officers (20a-22a).

Question 2

The petitioner asserts that there is absence of proof as to the cause of the fire and for that reason the Court of Appeals was not justified in sending the case back for further proceedings.

The District Court had found that the fire resulted either from spontaneous combustion or from an ex-

ternal igniting agency (3a, 5a). Indeed, it could hardly be anything else. The cargo owners argued that the evidence establishes that the fire could not have been spontaneous and it is apparent that the Court of Appeals was inclined to agree (23a). However, it did not pass on that issue definitely (23a), for it held that whichever may have been its cause, the undisputed evidence establishes that the absence of a protective covering could well have been proximately related to the outbreak of the fire (15a, 23a).

Questions 3 and 4

The petitioner urges that the findings of the District Court are not so clearly erroneous as to warrant a remand by the Court of Appeals. Under Question 1 the petitioner asserted that the Court of Appeals misread the evidence "and substituted its evaluation of the evidence for that of the District Court." Under Question 4 the petitioner argues that there is credible evidence supporting the findings of the District Court.

There is no question of "evaluation" of the evidence. As the Court of Appeals pointed out, on one key issue there is no evidence whatever supporting the finding below: the only evidence on the issue negatives the finding made (17a-19a, 31a). On another key issue the District Court overlooked the actual evidence and made its finding based on evidence which it thought was there but which never existed (15a-16a, 32a).

In a courteous effort to soften the impact of its conclusion that the District Court's findings are

clearly wrong, the Court of Appeals advanced possible explanations as to how the District Judge may have been led into error. The petitioner seeks (at p. 6) to take advantage of the Court's courteous language by arguing that it reached its conclusions "not on the basis of certainty but on the basis of appearances, apparent mistakes and assumed failures."

In *McAllister* v. *U. S.*, 348 U. S. 19, this Court held (at p. 20):

> "'the Court of Appeals may not set aside the judgment below unless it is clearly erroneous.' * * * A finding is clearly erroneous when 'although there is evidence to support it, the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed' * * *."

In the present case the Court of Appeals held that on key issues the findings below are "clearly erroneous": there is no evidence supporting them while there is evidence negativing them.

It appears in this petition (footnote on p. 3) that the right of recovery of the widow and children of the libellant-seaman who lost his life in the fire, is assumed to be governed by the same principles as control the rights of inanimate cargo. The same assumption was made by the District Court (1a) and resulted in that Court's apparent conclusion that the Carriage of Goods By Sea Act controlled the loss of life claim (3a, 5a).

While the right of recovery of the family of the deceased Belgian seaman who lost his life on the high

seas in the fire on the Norwegian S.S. "Black Gull", is dependent on a finding of negligence, statutory exceptions relating to cargo are of course inapplicable; and the negligence of any minor employee will serve to establish the petitioner's liability.

Petition of Skibs A/S Jolund

The owner of the "Black Gull" does not present any question of law for this Court's consideration. This petitioner, by constant reiteration, stresses that the courts below have not definitely decided whether the fire was spontaneous or resulted from an external igniting agency; and, it is urged, that it is cargo's burden to establish the cause of the fire.

While the Court of Appeals did not think it probable that the fire in the deck load of napthalene was spontaneous (23a), it held that, whatever its cause, the absence of a protective covering over this dangerous cargo could well have brought about the disaster. The case was remanded to give the District Court opportunity to consider the key issues which it had not considered because of its findings which the Court of Appeals found are clearly wrong.

The argument of this petitioner (at pp. 18-20) that the evidence establishes a practice to violate the standard of due care which the Court of Appeals found was controlling, does not, we think, require much consideration.

The Court of Appeals held that the United States Coast Guard Regulations and a Dutch regulation, established by the evidence as controlling, provide a

standard of due care (24a). This petitioner argues that the testimony of the opinion witnesses which it persuaded to testify, should be considered to be more persuasive than the government regulations mentioned. Moreover, it asserts (at p. 17) that the Court of Appeals adopted "a distorted reading" of the Coast Guard regulation concerning napthalene.

The Court of Appeals pointed out (at pp. 32a-33a) that it is the petitioners who "distort" the language of the Coast Guard Regulation which clearly required that a deck load of napthalene be covered by awnings, dunnage or tarpaulins.

Consideration of this petitioner's argument that the evidence does not establish the existence of the Dutch regulation concerning napthalene which the Court of Appeals found was a standard, would require this Court to examine the factual evidence in the case. The regulation was established by the testimony of a Dutch lawyer and by a letter addressed by the Dutch authorities to the petitioner, Black Diamond Steamship Corporation, enclosing a copy of the regulation (Pet. Ex. W). We find somewhat strange this petitioner's argument (at p. 19) that this letter enclosing the regulation should not be considered because neither the writer nor receiver testified in the case. The letter, with enclosure (Pet. Ex. W), was addressed to the Rotterdam agent of petitioner, Black Diamond, and was offered in evidence by petitioner, Skibs A/S Jolund.

This petitioner argues (at p. 13) that although respondents have had their day in court, neither court

below "can say on the record that they sustained their burden of proof. What, then, is the justification for further proceedings?" It then argues that the effect of the decision of the Court of Appeals is to reverse the established law as to the burden of proof under the statutory fire exemptions.

Both courts below and the present respondents have always recognized that it is cargo's burden to prove that its destruction by fire was causally related to the negligence of managing officers of the vessel-owner or charterer. Because of the District Court's manifest errors, as found by the Court of Appeals, the former court did not pass upon the vital issues of the case and the Court of Appeals directed it to do so.

We find it difficult to understand why either petitioner feels that this Court should grant a petition for certorari to consider this case in its present posture.

CONCLUSION

We submit that the petitions for a writ of certiorari should be denied.

Respectfully submitted,

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Respondents.

MOTION AND BRIEF OF NORGES REDERFORBUND (THE NORWEGIAN SHIPOWNERS' ASSOCIATION) FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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MOTION OF NORGES REDERFORBUND (THE NORWEGIAN SHIPOWNERS' ASSOCIATION) FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Norges Rederforbund (Norwegian Shipowners' Association) hereby respectfully moves for leave to file a brief *amicus curiae* in support of the petitions for certiorari in these cases, limited to the question of the interpretation of the Fire Statute and the fire exemption clause of the Carriage of Goods by Sea Act. So limited, this motion concerns only the petitioners and respondents, American Smelting & Refining Company, et al., the cargo claimants below. The petitioners have consented to this motion. The said respondents have failed to consent.

Norges Rederforbund is an association of 395 shipowners, constituting almost all of the Norwegian shipowners trading in foreign commerce, whose vessels total 13½ million deadweight tons. Much of the trade carried on by members of the Association is with the United States. For example, in the year 1957 there were 1,366 arrivals of Norwegian flag vessels at the Port of New York, 353 at San Francisco, 444 at Los Angeles, 811 at Hampton Roads, 729 at Baltimore, 147 at Seattle, 538 at New Orleans, and 447 at San Pedro. In all, Norwegian vessels in 1957 made well in excess of 5,000 calls to United States ports.

Article IV 2(b) of the Brussels Convention of 1924, commonly called "The Hague Rules", is identical to the fire exemption contained in Section 4(2)(b) of the United States Carriage of Goods by Sea Act. Norway has adhered to this Convention and, by Act of February 4, 1938, effective January 1, 1939, enacted the Convention as a part of its Navigation Law.

The members of this Association also maintain extensive trade with Belgium, Denmark, Finland, France, Great Britain, Italy, Portugal, Spain, and Sweden, all of which have also made the Brussels Convention part of their private law.

The interest of the moving party in these cases is, therefore, twofold:

1. To arrive at a uniform interpretation of the fire exemption, so that the obligation of its members to cargo owners may be certain and definite; and

2. In particular, to protect its members from the extraordinary burden which, perhaps inadvertently, the unprecedented decision of Court below imposed upon the carrier and shipowner in these cases.

Petitioners, being only a single shipowner and a single charterer respectively, may not be in a position to present adequately to this Court the importance of this question to the entire shipping industry and to the members of this Association in particular.

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MARIA VERBEECK, *et al.*,

Respondents.

—o—

BRIEF FOR NORGES REDERFORBUND (THE NORWEGIAN SHIPOWNERS' ASSOCIATION) IN SUPPORT OF PETITIONS

The facts and questions presented have been stated by the two petitioners and need not be repeated here.

We urge that the decision below be reviewed because it substantially weakens, and casts doubt upon, the protection uniformly afforded to carriers by all major maritime nations, as well as others, against liability for fire damage to cargo by their adoption of "The Hague Rules" (International Convention for the Unification of Certain Rules Relating to Ocean Bills of Lading, signed at Brussels August 25, 1924, 51 Stat. 233), made part of United States Law by enactment of The Carriage of Goods by Sea Act, 1936 (49 Stat. 1207-1213, 46 U. S. C. Secs. 1300-1315), commonly and hereinafter referred to as "COGSA".

Although we consider the Court of Appeals' decision wrong, we shall here emphasize the considerations which demonstrate the importance, both here and abroad, of the questions presented, and make it particularly appropriate for this Court to exercise its discretionary review jurisdiction.

It is inevitable that our Courts' treatment of the COGSA fire exception [49 Stat. 1210, 46 U. S. C. 1304(2)(b)] in this case will have an impact, virtually worldwide in scope. The Act itself is applicable by its own force to bill of lading contracts for the carriage of goods by sea "to or from" United States ports, in foreign trade (49 Stat. 1207, 1212, 46 U. S. C. Sec. 1300, 1312). Thus, in litigation abroad arising out of trade with the United States, courts of other countries may be expected to apply, or endeavor to apply, the COGSA fire exception in the same manner as American courts; indeed, they have done so in the past. *The Ocean Liberty*, Rep. of France, Tribunal de Commerce de la Seine (1st Div., Paris), 1952 A. M. C. 925, 932-933.

In addition, it is significant that COGSA expresses the United State's adherence to the above-mentioned Brussels Convention of 1924, the purpose of which was to develop internationally uniform rules governing the relations of

ocean carriers and their cargo. *Scarburgh* v. *Compania Sud. Americana De Vapores*, 2 Cir., 1949, 174 F. 2d 423, 424; *Knauth on Ocean Bills of Lading*, 1953 Ed., pp. 118-132, 136. This purpose has now in large measure been achieved by virtue of all major maritime nations having made The Hague Rules part of their private law either by ratification, proclamation or enactment of domestic legislation. A list of these countries, besides Great Britain, was recently published in *Carver's Carriage of Goods by Sea*, 10th Ed. 1957, Appendix 5, p. 1072. Japan has since ratified the Convention, effective January 1, 1958 (1957 A. M. C. 1698). In addition, shipowners of other countries have themselves voluntarily incorporated the Rules in their bills of lading, with result that the Rules have been aptly described as constituting a sort of "international common law" for carriage of goods under bills of lading. Dor, *Bill of Lading Clauses & The International Convention of Brussels, 1924 (Hague Rules)*, 1956, p. 147. Indeed, even in the private carriage of bulk cargoes under charter these Rules are important, it now being common for the parties to make COGSA or the Rules themselves part of their contract. See, *e.g.*, the recent decision of the House of Lords in *Adamastos Shipping Co., Ltd.* v. *Anglo Saxon Petroleum Co., Ltd.* [1958] App. Cas.—(not yet officially reported); London Times, March 7, 1958, p. 15.

Besides these international aspects, an equally important reason for this Court's reviewing now the questions here presented is the economic one suggested by this Court's recognition in *Consumer's Import Co.* v. *Kabushiki Kaisha*, 320 U. S. 249, 254-256 (1943), that the statutory immunity of carriers from liability for fire damage is necessarily reflected in the freight rates they charge. Similarly, such immunity is an important factor in the determination of the rates charged by underwriters for insuring cargo as well as in the determination of the rates charged by those underwriters who insure carrier liability. Any whittling down of the carrier's fire immunity

is therefore bound to be of economic importance to all interests concerned, whether on the cargo or the carrier side, and uncertainty alone as to the extent of the carrier's immunity is enough to make maintenance of a proper freight or insurance rate structure impossible.

Although the major error below lay in misplacing the burden of proof this was error in matter of substance, not mere procedure. The whereabouts of the burden of proof and rules as to what must be proved by the burdened party in order to succeed seriously affect, and often determine, the outcome. *Sampson* v. *Channell*, 1 Cir., 110 F. 2d 754, cert. den. 310 U. S. 650. This is inevitably true in cases involving shipboard fires and their causes, since, as succinctly pointed out in *The Strathdon*, 2 Cir., 101 Fed. 600, 606, "the occult causes of fire are as numerous as they are mysterious."

Nor is it any answer to the present applications that the District Court conceivably may yet find in this case that there was no negligence or that, if there was, it was not the proximate cause of the fire. Such an outcome cannot remove the doubt cast by the Court of Appeals' decision on the long line of cases holding that in order to avoid the fire exception cargo must affirmatively prove the cause of the fire and that it was due to the negligence of a managing agent of the carrier. The cases are cited in Black Diamond's petition, p. 13 and in Skibs A/S Jolund's petition, p. 11. In substance, notwithstanding a District Court decision in the carrier's favor in this particular case, uncertainty and a lack of definitive guidance will continue to prevail until this Court settles the questions here presented, once and for all.

Finally, the decision below is contrary to this Court's decision in *Commercial Molasses Corporation* v. *New York Barge Corporation*, 314 U. S. 104. There the District Court held that the cause of the accident had been left in doubt but decreed recovery. The Court of Appeals and this Court

both held that with the evidence in balance the libellant must fail. In the case at bar the District Court found:

> 36. Even if it be assumed that failure to cover the stow of bag naphthalene with a tarpaulin was either negligence or in violation of controlling statute or regulation, *libelants have not proved that that failure was the proximate cause of the fire* (italics ours).

This is a stronger finding for petitioners than the "in doubt" finding in *Commercial Molasses*. Therefore, in reversing the decision despite such a finding the Court of Appeals has, in effect, overruled this Court's *Commercial Molasses* decision.

CONCLUSION

For the foregoing reasons it is respectfully submitted that these petitions for writs of certiorari should be granted.

Dated: New York, New York, March 15, 1958.

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Certificate of Service

I, EUGENE UNDERWOOD, counsel for Norges Rederforbund (The Norwegian Shipowners' Association) certify that on the 14th day of March, 1958, I served a copy of the foregoing motion and brief on the following attorneys by mailing a copy to each of them in duly addressed, first-class, postage prepaid envelopes to their respective addresses noted below, said attorneys representing all the parties to the captioned proceedings:

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Supreme Court of the United States

OCTOBER TERM, 1957

No. 800

In the Matter
of the
Petition of SKIBS A/S JOLUND, in a cause of exoneration from or limitation of liability for damages arising out of a fire on board the "BLACK GULL" on July 18, 1952.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, *et al.*,
Respondents.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

MARIA ANGELINA VERBEECK, *et al.*,
Respondents.

No. 815

In the Matter
of the
Petition of SKIBS A/S JOLUND, as owner of the M/S "BLACK GULL" for exoneration from or limitation of liability.

SKIBS A/S JOLUND,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASEBRICK & CO., *et al.*,
Respondents,

MARIA VERBEECK, *et al.*,
Respondents.

OBJECTIONS BY RESPONDENTS TO THE MOTIONS FOR LEAVE TO FILE BRIEFS AS AMICI CURIAE IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI

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Supreme Court of the United States

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OBJECTIONS BY RESPONDENTS TO THE MOTIONS FOR LEAVE TO FILE BRIEFS AS AMICI CURIAE IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI

There are before the Court two motions for leave to file briefs amici curiae in support of the petitions for a writ of certiorari—one in the name of Norwegian Shipowners' Association, and the second in the name of Royal Netherlands Shipowners Association.

Rule 42 (1) of this Court states that motions for permission to file briefs amici in support of petitions for certiorari "are not favored." Rule 42 (3) provides that parties served with such motions may file objections "concisely stating the reasons for withholding consent."

We did not withhold consent to the filing of a brief in the name of Royal Netherlands Shipowners Association because our consent was never asked, although we are counsel for all libellants in the suit against petitioner, Black Diamond Steamship Corporation, as well as counsel for cargo claimants in the limitation proceedings instituted by petitioner, Skibs A S Jolund, the claims of our clients totaling nearly $3,000,000. We are also counsel for death claimants in the limitation proceedings. We did not know of the existence of this Dutch association until we received copy of its motion.

Charles S. Haight, Esq., who now appears as counsel for Royal Netherlands Shipowners Association, did ask our consent to the filing of a brief amicus in the name of Norwegian Shipowners' Association, for which, strangely enough, Eugene Underwood, Esq., now appears as counsel.

We withheld consent to the filing of a brief in the name of Norwegian Shipowners' Association—and

we would have withheld consent to the filing of a brief by Netherlands Shipowners Association if we had been asked—because in our opinion this case is peculiarly inappropriate for the intervention of amici curiae.

In our brief in opposition to the petitions for a writ of certiorari we pointed out that the Court of Appeals dealt only with facts; that it did not consider the burden of proof under the Fire Statute (46 U. S. C. sec. 182) or the Fire Exception of the Carriage of Goods by Sea Act (46 U. S. C. sec. 1304 (2) (b)); that it did not determine the petitioners' liability or non-liability to the respondent cargo owners and death claimants; that it did direct the District Court to make findings on the two most vital issues of the case which that court had not considered because of its findings on other issues which the Court of Appeals found were clearly wrong.

The motions with accompanying briefs now served upon us, disclose that the moving parties are not true amici curiae. They serve as adjunct counsel for the petitioners and seek, through repeated assertions, to persuade this Court that an important legal issue of worldwide interest was erroneously decided by the Court of Appeals when no such issue was ever considered.

In our briefs in the District Court and in the Court of Appeals we agreed that when either the Fire Statute (46 U. S. C. sec. 182) or the fire exemption of the Carriage of Goods by Sea Act (46 U. S. C. sec. 1304 (2) (b)) is applicable, the established authorities are clear that the burden is on cargo owners to prove that the loss of their property was causally

related to the negligence of managing officers of the vessel owner in the one case and of the charterer-carrier in the other.

Motion of Norwegian Shipowners' Association

It is asserted that this association includes in its membership almost all Norwegian shipowners trading in foreign commerce. Petitioner, Skibs A/S Jolund, owner of the "Black Gull," is a Norwegian shipowner and presumably a member of this association. Why it is felt that this association can more adequately present such arguments as may be available for the granting of a petition for certiorari than can the vessel owner and charterer who have some $3,000,000 at risk, does not appear.

Motion of Royal Netherlands Shipowners Association

This association asks this Court to receive its brief because, it is said, the owner and charterer of the "Black Gull" cannot speak for Dutch shipowners and carriers. It is asserted that this Dutch association can advance "a more complete argument on the issue of the construction of the statutes of the United States relating to fires on vessels" than can the petitioners, including Black Diamond Steamship Corporation, an American company.

This moving party asks the Court to receive what is asserted to be a brief amicus curiae but which includes argument (at pp. 9, 13-14) that the facts found by the Court of Appeals are erroneous. Although the evidence established, as the Court of Appeals found, that a Dutch governmental regulation

dealt with the proper stowage of napthalene, this Court is asked (at p. 9 of the brief) to accept the assertion of this moving party that the Court of Appeals is wrong and that there was no such Dutch regulation.

* * * *

We oppose the granting of the petitions for a writ of certiorari because, within the language of Rule 19 of this Court, "there are no special and important reasons therefor." While this Court can, of course, grant such petitions at its discretion, in a case such as the present where nothing but issues of fact are presented, this Court does not usually feel that a writ of certiorari is appropriate.

We object to the present motions because in our opinion they are not made by true amici curiae and intervention by amici curiae in this case is inappropriate in any event.

No United States shipowners or shipowners' associations nor any foreign vessel owners or owners' associations other than these moving parties, have felt that the decision in this case impinges upon their interests so that they should file briefs amici.

Respectfully submitted,

HENRY N. LONGLEY,
JOHN W. R. ZISGEN,
Counsel for Respondents.

MOTION FILED MAR 1 5 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

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No. 815

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BLACK DIAMOND STEAMSHIP CORP.,

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vs

MARIA ANGELINA VERBEECK, ET AL.,

Respondents

MOTION OF KONINKLIJKE NEDERLANDSCHE REEDERSVEREENIGING (Royal Netherlands Shipowners Association) FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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MOTION OF KONINKLIJKE NEDERLANDSCHE REEDERSVEREENIGING

(Royal Netherlands Shipowners Association) FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Koninklijke Nederlandsche Reedersvereeniging (Royal Netherlands Shipowners Association) respectfully moves for leave to file a brief as *Amicus Curiae*, in support of the petitions for a writ of Certiorari to the United States Court of Appeals for the Second Circuit. The consent of counsel for the petitioners and counsel for one of the claimants has been obtained. The consent of counsel for the remaining claimants was requested but refused.

Koninklijke Nederlandsche Reedersvereeniging, as the Shipowners Association of the Kingdom of The Netherlands, is an association of Dutch shipping companies engaged in ocean commerce throughout the world. It has its home office in The Hague, The Netherlands. Its 60 members operate vessels totalling some 5,300,000 deadweight tons and include practically all the Dutch companies owning ships trading in foreign commerce, with a large number of such ships trading to and from the United States.

As more particularly set forth in the attached Brief, the statutes of the United States relating to fires on vessels are of vital importance to Dutch shipowners and carriers; and the uniform and consistent construction of such statutes by the courts of the United States is of equal importance.

In these cases the Trial Court dismissed the libels and claims because the libelants and claimants had not sustained their burden of proof with respect to the cause of a fire which occurred on board the Norwegian M/S Black Gull at sea on July 18, 1952. The Court of Appeals reversed and remanded the cases because the shipowner and carrier

had not disproved a possible but *unproved* cause of the fire. By so doing the Court of Appeals for the Second Circuit ignored prior interpretations of the statutes and shifted the Burden of Proof from the cargo and other claimants to the owner and carrier concerned.

To shift the Burden of Proof under the statutes of the United States relating to fires on vessels, from cargo and other claimants to shipowners and carriers, would have a serious adverse effect upon all shipowners and carriers, domestic as well as foreign, because they have set their rates with respect to trade with the United States on the basis that the statutes of the United States relating to fires on vessels, together with the decisions construing such statutes, relieve the owner and carrier from liability for loss or damage resulting from fire unless the cargo and other claimants prove (1) the proximate cause of the fire, and (2) that the fire was "caused by the design or neglect" of the shipowner under the Fire Statute, or that the fire was "caused by the actual fault or privity of the carrier" under the Carriage of Goods by Sea Act.

Because the petitioners in these cases are a single Norwegian shipowner and a single American carrier, they cannot speak for the great number of Dutch shipowners and carriers who are vitally concerned in the decision of the Court of Appeals, and in the adverse effect which, it is respectfully submitted, such decision will have, unless altered by this Court, upon *all* shipowners and carriers who are engaged in trade from and to the United States.

Under these circumstances, it is believed that the Brief which Koninklijke Nederlandsche Reedersvereeniging is requesting permission to file will contain a more complete argument on the issue of the construction of the statutes of the United States relating to fires on vessels, particularly with respect to the Burden of Proof in such cases, on which point there has not yet been an express ruling by this Court.

It is believed that all Shipping Interests—Shipowners, Carriers, Cargo and other Claimants, both in the United States and abroad—would share in the benefit of a review by this Court at the present time of the decision of the Court of Appeals in these cases.

Respectfully submitted,

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BRIEF OF KONINKLIJKE NEDERLANDSCHE REEDERSVEREENIGING

(Royal Netherlands Shipowners Association)

JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit, and its opinion on petitions for rehearing, are printed in the Appendices to the petitions for Writ of Certiorari and now appear in the Advance Sheets for 250 F. 2nd at page 777. The opinion of the District Court for the Southern District of New York is reported in 144 Fed. Supp. 47, and is also printed in the Appendices to the petitions.

The decree of the Court of Appeals for the Second Court was entered on November 29, 1957. Timely petitions for Rehearing in that Court were denied on January 16, 1958.

The Jurisdiction of this Court is conferred by Title 28 U. S. Code § 1254.

STATUTES INVOLVED

The Fire Statute, 46 U. S. C. Sec. 182—"Loss by Fire. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner." (R. S. Sec. 4282).

Carriage of Goods by Sea Act, 46 U. S. C. Sec. 1304 (2). "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from * * * * (b) Fire, unless caused by the actual fault or privity of the carrier." (49 Stat. 1210(2))

INTEREST OF AMICUS CURIAE

Koninklijke Nederlandsche Reedersvereeniging (Royal Netherlands Shipowners Association) is an Association of Dutch shipping companies engaged in ocean commerce throughout the world. Its home office is in The Hague, The Netherlands. Its 60 members operate vessels totaling some 5,300,000 deadweight tons and include practically all the Dutch companies owning ships trading in foreign commerce, a very great number of which are engaged in trade with the United States.[1]

The members of Koninklijke Nederlandsche Reedersvereeniging have a vital interest in the statutes of the United States relating to fires on vessels; and in the uniform and consistent construction of such statutes.

It is respectfully submitted, for the reasons set forth in this Brief, that *all* shipping interests—Shipowners, Carriers, Cargo and other Claimants, both in the United States and abroad—would share in the benefit of a review by this Court at this time of the decision of the Court of Appeals in these cases.

QUESTION PRESENTED

1. May a Court of Appeals shift from cargo and other claimants to the shipowner and the carrier the burden of proof with respect to (1) the proximate cause of the fire and (2) whether the fire was "caused by the design or neglect" of the shipowner under the Fire Statute, or whether the fire was "caused by the actual fault or privity of the carrier" under the Carriage of Goods By Sea Act,

[1]Records for 1957 indicate that in that year 536 calls were made by Dutch vessels at the Port of New York, 201 at Baltimore, 183 at Hampton Roads, 102 at San Francisco, 85 at Los Angeles, 45 at Seattle, 50 at Portland, Oregon and 343 at New Orleans. We do not presently have available figures for other United States ports.

notwithstanding the fact that such statutes and their construction by the Courts in prior cases place such burden of proof upon the cargo and other claimants?

ARGUMENT

I

The statutes of the United States relating to fires on vessels, and the uniform and consistent construction of such statutes by the Courts of the United States, are of vital importance to Dutch shipowners and carriers.

Dutch shipowners and carriers have a vital interest in the statutes of the United States relating to fires on vessels, and in the construction of such statutes, because trade between The Netherlands and the United States has been developed on the basis that the shipowner and carrier is protected from liability for damage and loss by fire unless cargo and other claimants meet the Burden of Proof upon them to establish the proximate cause of the fire and that the fire was caused by personal fault of the shipowner or carrier.

The statutes of the United States relating to fires on vessels have been a vital factor in the past development of the commerce between the United States and The Netherlands, and such statutes continue as an essential factor in the maintenance of such commerce.

The Shipping Industry abroad has built up its trade with the United States in reliance upon the construction of the statutes of the United States relating to fires on vessels, under which cargo and other claimants have the burden to prove (1) the proximate cause of the fire and (2) that the fire was "caused by the design or neglect" of the shipowner under the Fire Statute, or that the fire was "caused by the actual fault or privity of the carrier" under

the Carriage of Goods By Sea Act. See *Hoskyn & Co. Inc. et al.* v. *Silver Line Ltd.*, 143 F. 2d 462 (1944); *Petition of Isbrandtsen Company*, 201 F. 2d 281 (1953); A/S *J. Ludwig Mowinckels Rederi* v. *Accinanto, Ltd.*, 199 F. 2d 134 (1952), cert. den'd, 345 U. S. 992 (1953); *The Cabo Hatteras*, 5 F. Supp. 725 (1933).

The history and purpose of these statutory enactments, with respect to the precise point herein concerned, was well summarized by the Court of Appeals for the Second Circuit (the same court concerned in these cases) in *The Automobile Insurance Company, et al* v. *United Fruit Company*, 224 F. 2d 72 (1955) Cert. denied 345 U. S. 992. In that case the Court of Appeals said (p. 75):

> "We think that congress intended as a condition for recovery for damage due to fire loss *to place the burden on cargo interests* of establishing that the fire was caused by the design or neglect of the owner." (Emphasis added)

In the *Automobile Insurance Company* case, the cargo claimants attempted to establish a presumption of fault against the vessel interests by applying the doctrine of statutory fault, established in *The Pennsylvania*, 86 U. S. 125, to proof of the cause of a fire which caused damage to the ship's cargo. The Court assumed that there was a violation of statute and that there was a violation of Coast Guard Regulations regarding the stowage of the particular commodity concerned. However, the Court rejected such effort by the cargo claimants to establish a presumption of fault on the part of the vessel interests. The Court recognized that any such effort would adversely affect the very interests which the statute was designed to protect, and held that the cargo claimants were *not* entitled to the benefit of any such presumption. On this point the Court said (p. 75):

> "We are unwilling to allow a presumption supplied by the doctrine of statutory fault to substitute

> for proof of cause required by statute. To do so would at times result in *shifting the burden of proof to the owner of a vessel by requiring him to show freedom from fault.* This we believe, would undermine the very purpose of the statutory exemption." (Emphasis ours)

The Automobile Insurance Company case holds that the Rule of *The Pennsylvania* does not apply to fire cases, and that a violation of an *actual* statute or regulation does not give rise to a presumption of fault. But the Court of Appeals in the present cases, ignoring its own precedent, would go even further than the Rule of *The Pennsylvania*, and would give to a proposed or draft regulation a force and effect which not even an actual statute or regulation can have in a fire case.

Koninklijke Nederlandsche Reedersvereeniging confirms that no Dutch regulations regarding the carriage of naphthalene were in force at the time of the fire.

The facts regarding the proposed or draft regulation are set forth in the petitions herein, together with facts regarding the practice over a long period of years during which vessels have been loaded in Dutch ports with deck loads of naphthalene uncovered, in the same manner as the loading of the Black Gull. It is apparent that the proposed or draft regulation was not "an accepted standard of care".

Although, as set forth herein, prior decisions in circuit and lower courts have held, and leading authorities agree, that the burden is on claimants and libelants to establish the proximate cause of the fire and to prove that the fire was "caused by the design or neglect" of the shipowner under the Fire Statute, or that the fire was "caused by the actual fault or privity of the carrier" under the Carriage of Goods By Sea Act this Court has not yet ruled expressly on the burden of proving "design or neglect" or "fault or privity."

Earle & Stoddart, Inc., et al., v. *Ellerman's Wilson Line Ltd.*, 287 U. S. 420 (1932), and *Consumers Import Co., et al.* v. *Kabushiki Kaisha Kawasaki Zosenjo, et al.*, 320 U. S. 249 (1943), are leading decisions in which this Court upheld the Fire Statute. In the latter case this Court, addressing itself to the question as to whether the Fire Statute extinguished maritime liens for cargo damage, held that the statute immunized the owner completely and that "Congress has, with the exception stated in the Act, extinguished fire claims as an incident of contracts of carriage" (p. 254). Mr. Justice Jackson includes in his opinion a most interesting and helpful analysis of the history and practical results of the Fire Statute (pp. 254-256).

While the United States Fire Statute was designed "to enable our merchant marine to compete" on an equal basis with foreign shipowners (*Consumers Import Co., et al.* v. *Kabushiki Kaisha Kawasaki Zosenjo, et al.*, 320 U. S. 249, 254), it, together with the almost universal adoption of the Hague Rules in various national Carriage of Goods By Sea Acts,[2] has had the desirable effect of uniformity in rate structures. "It enabled the carrier to compete by offering a carriage rate that paid for carriage only, without loading it for fire liability. The shipper was free to carry his own fire risk, but if he did not care to do so it was well known that those who made a business of risk-taking would issue him a separate contract of fire insurance." *Consumers Import Co., et al.* v. *Kabushiki Kaisha Zosenjo, et al., supra*, at p. 255.

Until the United States Court of Appeals for the Second Circuit rendered its decision in these cases, the universal view was that under the Fire Statute and under the

[2]The United States Carriage of Goods by Sea Act is based upon the "Hague Rules" contained in the Brussels Bill of Lading Convention of 1924. In addition to the United States some 23 nations, including The Netherlands, have adopted the Hague Rules or enacted legislation to the same effect.

Carriage of Goods by Sea Act, the cargo and other claimants have the burden to prove (1) the proximate cause of the fire, and (2) that the fire was "caused by the design or neglect" of the shipowner under the Fire Statute, or that the fire was "caused by the actual fault or privity of the carrier" under the Carriage of Goods By Sea Act.

Poor on Charter Parties (Fourth Edition) states unequivocally "When a loss by fire is established, the burden of proving 'actual fault or privity' or 'design or neglect' falls upon cargo interests, and proof of unseaworthiness and lack of due diligence, without more, does not deprive the carrier of the statutory exemption" (page 177). Knauth on Ocean Bills of Lading (Fourth Edition) says "The burden of proving 'design or neglect' or 'actual fault or privity' remains upon the party libellant" (page 214).

II

To shift the Burden of Proof would have a serious adverse effect upon Dutch Shipowners and Carriers.

If the Burden of Proof, long established as being upon cargo and other claimants, were to be shifted to shipowners and carriers, it would have a serious adverse effect upon Dutch shipowners and carriers.

Rates for ocean carriage would no longer be on the basis of "carriage only", but they would have to be "loaded" for fire liability, thus bringing back the undesirable practices and conditions discussed in the *Consumers Import Co.* case, *supra*.

The protection given to shipowners and carriers under the United States statutes, would be destroyed by shifting the Burden of Proof. Such destruction would greatly hinder and retard the Dutch shipowners and carriers in their trade to United States ports, by reason of the un-

certainties which would result from the loss of the present uniform basis for ocean freight rates, and by the increased costs of the shipowner and carrier being forced to provide fire insurance as well as ocean carriage.

Fire claims "as an incident of contracts of carriage" would no longer be "extinguished" as Congress intended (*Consumers Import Co.* case, *supra*), but would be revived by such a shift of the Burden of Proof.

III

The decision of the Court of Appeals for the Second Circuit should be reviewed by this Court at the present time.

It is respectfully submitted that in its decision in these cases, the United States Court of Appeals for the Second Circuit has now done that which it was careful in the *Automobile Insurance Company* case to *avoid* doing—the Court in the present cases has shifted "the burden of proof to the owner of a vessel by requiring him to show freedom from fault."

The decision of the Court of Appeals would remand the present cases back to the Trial Court for further findings on the issues: (1) Was it negligent to fail to cover the cargo from the sun? (2) If so, was the negligence the cause of the damage?

The shipowner and carrier would be required to *disprove* any such negligence *even before* the second issue, as specified by the Court of Appeals, would be reached—i.e. "If so, was the negligence the cause of the damage?" Here again, the burden would be shifted to the shipowner and carrier to *disprove* a causal connection between any alleged but unproved negligence and the damage.

The burden thus imposed upon the shipowner and carrier by the decision of the Court of Appeals is a most

serious departure from the long established Rule—i.e. that the cargo and other claimants must prove (1) the proximate cause of the fire, and (2) that the fire was "caused by the design or neglect" of the Shipowner under the Fire Statute, or that the fire was "caused by the actual fault or privity of the carrier" under the Carriage of Goods by Sea Act.

The issue which first arises in a fire case is what was the proximate *cause* of the fire? Only when the cargo and other claimants have met their burden of proving the *cause* of the fire, does the second issue arise—was the fire caused by personal fault on the part of the shipowner or carrier?

The departure made by the Court of Appeals is vividly illustrated by the following passage in the Court of Appeals' decision denying the petitions for rehearing:

> "Libelants contended that the napthalene might have been protected by covering with tarpaulin. Petitioners concede that the regulations say 'hazardous articles *may* be protected by the use of a tarpaulin'. The Judge's findings was that the napthalene *could not possibly* have been protected by such means. It is with this that we have mainly found fault."

The issue is not whether the naphthalene *could possibly have been protected by tarpaulins*, as the Court of Appeals appears to have believed was the issue. The Court "mainly found fault" with the Trial Judge because the Court of Appeals understood that the Trial Judge had found that "the naphthalene *could not possibly* have been protected by such means." No such finding was made by the Trial Judge.

The findings made by the Trial Judge, and to which the Court of Appeals referred as the "key findings as to lack of causation" are Findings 29 and 35 as follows:

> "29. The sun's rays could not have caused or contributed to the *cause of the fire*". (Emphasis added)
>
> "35. The failure to cover the bags of naphthalene on the 'Black Gull' with a tarpaulin was not and could not have been a contributing *cause of the fire*". (Emphasis added)

It is respectfully submitted that the Trial Judge decided the *correct* issue—namely, was the absence of tarpaulins *the cause* of the fire?

The Trial Judge's Findings Nos. 31 and 32 are set out in footnote 1 to the decision of the Court of Appeals, and they show that the Trial Judge found that, on all the evidence, the use of a tarpaulin "*would not* have prevented the fire on the 'Black Gull' " (Finding No. 31); and "*would not* have afforded protection from ignition due to creosote oil or gases" (Finding No. 32) (Emphasis added).

The Trial Judge's last finding on the subject of a tarpaulin coverage was:

> "36. Even if it be assumed that failure to cover the stow of bagged naphthalene with a tarpaulin was either negligence or in violation of controlling statute or regulation, *libelants have not proved that that failure was a proximate cause of the fire.*" (Emphasis added).

We have gone into some detail in the foregoing discussion not because *Amicus Curiae* would seek to intervene on any question concerning the facts or the merits of these cases, but to illustrate and emphasize the *departure* which is made in the decision of the Court of Appeals from the established Rule as to the Burden of Proof in fire cases.

IV

The decision of the Court of Appeals for the Second Circuit, unless reversed by this Court, will stand as a harmful precedent regardless of the outcome of these cases on remand.

Even if the final result in the Trial Court, upon remand of these cases in accordance with the decision of the Court of Appeals, were to be exoneration of the shipowner and carrier, the decision of the Court of Appeals, unless altered by this Court, will have a harmful effect on Dutch and all other shipowners and carriers, both United States and foreign flag, which are engaged in the import or export commerce of the United States. The Court of Appeals held the Trial Court in error for dismissing the claims simply because the owner and carrier had not disproved *unproved* allegations of causation. This is contrary to all principles of tort law as well as inconsistent with the text, spirit and purpose of the Fire Statute and the Carriage of Goods by Sea Act.

The decision of the Court of Appeals, unless altered by this Court, will stand as a precedent with respect to the Burden of Proof in cases concerning fires in ships, and thus will adversely affect the interests of the members of Koninklijke Nederlandsche Reedersvereeniging, as well as shipowners and carriers generally.

It is the issue as to Burden of Proof under the Fire Statute and under the Carriage of Goods by Sea Act in which the members of Koninklijke Nederlandsche Reedersvereeniging, and other shipowners and carriers, are vitally concerned. That issue can be settled only by this Court now reviewing the decision of the Court of Appeals.

CONCLUSION

Wherefore, Koninklijke Nederlandsche Reedersvereeniging as *Amicus Curiae* respectfully urges that the Petitions for Writ of Certiorari to the United States Court of Appeals for the Second Circuit be granted.

Respectfully submitted,

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CER E ACE

I, CHARLES . . HAIGHT, Counsel for KONINKLIJKE NEDERLANDSCHE REEDERSVEREENIGING (Royal Netherlands Shipowners Association) *Amicus Curiae*, and a member of the Ba. of the Supreme Court of the United States, hereby certify that on the 14th day of March, 1958, I served a copy of the foregoing Motion and Brief on each of the attorneys named below by mailing the same to them in duly addressed envelopes, with first class postage prepaid, at their respective addresses stated below, said attorneys being Counsel for all of the parties in the captioned proceedings:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 815...

In the Matter

of the

Petition of SKIBS A/S JOLUND, as owner of the M/S BLACK GULL for exoneration from or limitation of liability.

SKIBS A/S JOLUND,

Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & CO., et al.,

Respondents,

MARIA VERBEECK, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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Petition of SKIBS A/S JOLUND, as owner of the M/S BLACK GULL for exoneration from or limitation of liability.

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vs.

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & CO., *et al.*,

Respondents,

MARIA VERBEECK, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Skibs A/S Jolund, a Norwegian corporation and owner of the former motor vessel BLACK GULL, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit which reversed a decree of the District Court for the Southern

District of New York, in admiralty, which granted petitioner's petition for exoneration from liability for all claims arising out of a fire which occurred on the BLACK GULL on July 18, 1952; and the order of the Court of Appeals which denied Skibs A/S Jolund's petition for a rehearing.

The respondents above named who filed claims in petitioner's limitation proceeding asserted the same claims in separate suits on libels filed against Black Diamond Steamship Corp., which was the time-charterer of the BLACK GULL at the time of the fire. Petitioner's limitation proceeding and the libels against Black Diamond were joined for trial in the District Court, and argued simultaneously on appeal. The District Court entered a decree dismissing the libels against Black Diamond, and the Court of Appeals reversed that decree. Black Diamond has filed in this Court a petition for writ of certiorari to review the judgment of the Court of Appeals.

The opinion of the District Court for the Southern District of New York is reported in 144 Fed. Supp. 47. The opinions of the Court of Appeals for the Second Circuit have not yet been officially reported. These opinions are printed in the Appendix to this petition for writ of certiorari.

The decree of the Court of Appeals for the Second Circuit was entered on November 29, 1957. A petition for rehearing in that court was denied on January 16, 1958.

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254(1).

Questions Presented

1. Where a shipowner has invoked the defense of the Fire Statute (46 U.S.C. Sec. 182) against claims for cargo loss and damage resulting from a fire aboard ship at sea,

and after a full trial cargo claimants have failed to prove the cause of the fire, may the Court of Appeals reverse a decree of the trial court dismissing all claims on the ground that it disagreed with some of the trial court's findings of fact as to *possible* causes of fire, without holding that the cause of the fire had been established?

2. Is the standard of due care in the stowage of cargo in sea transportation to be fixed by the long continued practice and opinion of men engaged in the business that napthalene should be shipped on deck uncovered, or may an Appellate Court substitute for such standard its own view unsupported by any proof that it may have been negligent not to cover the napthalene from the sun?

Statutes Involved

The Fire Statute, 46 U.S.C. Sec. 182—"Loss by Fire. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner." (R.S. Sec. 4282).

Carriage of Goods by Sea Act, 46 U.S.C. Sec. 1304 (2). "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from * * * * (b) Fire, unless caused by the actual fault or privity of the carrier."

Statement

The Norwegian flag motor vessel BLACK GULL was owned by petitioner Skibs A/S Jolund, a Norwegian corporation, and was under long term time charter to Black Diamond Steamship Corp., employed by charterer in regular line

service between European and North Atlantic United States ports. In July 1952 she was loaded by charterer's representatives at Bremen, Hamburg, Rotterdam and Antwerp, including a deck load of about 550 tons of crude napthalene in used bags. These bags were stowed uncovered on the weather deck of the vessel in accordance with long established practice. At Antwerp, on completion of the loading there, the vessel obtained a certificate approving her loading and stowage from the official appointed by the Belgium Court of Commerce. She sailed from Rotterdam for New York on July 10. Nothing out of the ordinary occurred on the voyage until 11:10 P.M., July 18, when she was 50-60 miles off Nantucket, at which time fire was discovered in the deck stow of napthalene bags. The fire was found to have originated between the second and third tiers of bags abreast the No. 4 hatch, and the cause of the fire was not determined. Officers and crew got water on deck and fought the fire for 4½ hours, when it was necessary to abandon the ship. The nine passengers and all of the crew of forty were brought off safely in the boats, with the exception of four crew members who were missing and apparently lost their lives in fighting the fire. The ship and practically all the cargo were totally lost.

The vessel owner Jolund filed in the United States District Court for Southern District of New York, a petition for exoneration from or limitation of liability pursuant to United States laws (46 U.S.C. Sec. 183). Claims were filed in this proceeding by representatives of Verbeeck, a crew member who lost his life, by passengers for alleged personal injuries, and by various cargo owners in amounts totaling some $3,000,000. Identical claims were filed in separate suits on libels against Black Diamond Steamship Corp., the charterer of the vessel. The limitation proceeding and the libels against Black Diamond were consolidated for trial, which took place before Hon. Edward J. Dimock, commencing February 6th and ending on February 28th, 1956. On November 27th, 1956, the trial court entered its decree

granting the petition of Jolund for exoneration from liability and dismissing all claims filed in the limitation proceedings. Claimants appealed, and on November 29th, 1957, the Circuit Court of Appeals entered an order reversing the District Court's decision and remanding the case to the District Court for further proceedings.

REFERENCES

AA — Cargo Claimants Libellants-Appellants' Appendix in the Court of Appeals.

PA — Petitioner-Appellee Jolund's Appendix in the Court of Appeals.

RA — Respondent-Appellee Black Diamond's Appendix in the Court of Appeals.

R — The type-written trial record.

Argument

I

The decision of the Court of Appeals should be reversed by this court because it nullifies the effect of the United States statutes relating to fires at sea, and is irreconcilable with the decisions of this Court dealing with those statutes.

Since 1851 the Fire Statute, 46 U.S.C. Sec. 182, has afforded complete immunity to shipowners against claims for cargo loss and damage due to fire aboard ship where the cause of the fire is not established. This Court in the leading case of *Earle & Stoddard, Inc., et al.*, v. *Ellerman's Wilson Line, Ltd.*, 287 U.S. 420, said at page 425:

> "The fire statute, in terms, relieves the owners from liability 'unless such fire is caused by the design or neglect of such owner'. The statute makes no other exception from the complete immunity granted."

In *Consumers Import Co., Inc., et al.*, v. *Kabushiki Kaisha Kawasaki Zosenjo, et al.*, 320 U.S. 249, this Court discussed the history and purposes of the Fire Statute and said at page 255:

> "The purpose of the statute to relieve carriage rates of the [fire] insurance burden would be largely defeated if we were to adopt an interpretation which would enable cargo claimants and their subrogees to shift to the ship the risk of which Congress relieved the owner."

By Sec. 4 (2) (b) of the Carriage of Goods by Sea Act, (1936) 46 U.S.C. Sec. 1304, the same exemption is given all carriers of cargo shipped under bills of lading in foreign trade.

These statutes were adopted as necessary to the operation of the shipping industry by relieving ocean carriers of the tremendous risk of liability for fire losses at sea unless caused by the carriers' personal design or neglect. Similar laws have been adopted by all maritime nations. They represent a vital principle of maritime law, which recognizes that fire on ship board can and does break out from causes that can not be established. The history of sea voyages is full of unexplained fires. The Circuit Court of Appeals for the Second Circuit said in *The Strathdon*, 101 Fed. 600 at page 606—"The occult causes of fire are as numerous as they are mysterious."

The fire in this case broke out in a deck stow of crude naphthalene packed in used bags at 11:10 P.M., July 18, 1952, when the BLACK GULL was in the North Atlantic, 50-60 miles off Nantucket, bound from European ports for New York. In accordance with approved practice, the bags were stowed uncovered on the main or weather deck of the vessel in tiers about six bags high, and the fire was first found in the second or third tier from the top abreast

the No. 4 hatch. The only charge of negligence asserted by claimants at the trial was failure to cover the stow of bags with tarpaulins.

In a thirteen day trial the trial judge heard the testimony in open court of sixteen witnesses, including all the vessel's deck officers, her chief engineer, the Black Diamond superintendent and the stevedore superintendent who loaded the naphthalene at Antwerp and Rotterdam, as well as witnesses from other steamship lines experienced in handling naphthalene cargoes. Two expert chemists testified—Dr. Snell, called by claimants, and Dr. Purdy, called by respondent. Seventy some exhibits were received in evidence.

The trial judge duly filed his opinion, and his Conclusion of Law, No. 5—"The proximate cause of the fire aboard the M. V. BLACK GULL has not been established." He then as required by the Statutes referred to and in accordance with the decisions of this Court dismissed all claims.

In his trial brief counsel for passenger claimants stated —"The cause of the fire remains unknown." Indeed, it is not possible to read the record of this trial and find that the cause of the fire has been established. The Court of Appeals does not so find. Nevertheless, it has reversed the trial court, not because the conclusion that the cause of the fire had not been established was clearly erroneous, but because it disagreed with some of the trial court's findings of fact as to various *possible* causes of fire.

The trial record includes testimony, discussions and arguments relating to three possible causes of the fire: (1) outside ignition, as by spark, lighted cigarette, etc.; (2) spontaneous combustion in the bagging, a possibility established by the testimony of the distinguished chemist Dr. Purdy, based on actual tests made by him (A.A. 370); (3) spontaneous combustion resulting from impurities in the

naphthalene itself.[1] In the opinion of the Court of Appeals there was another possibility—heat from rays of the sun raising the temperature of the naphthalene to a point where it would ignite, although this possibility is not supported by any testimony, and is denied by the experts who testified, (Purdy R.A. 164a; Aeby, A.A. 265a)[2].

The trial court in its opinion cites *The Automobile Insurance Co. et al.* v. *United Fruit Company,* (The Shell Bar) 224 F.2d 72, (Certiorari denied, 350 U.S. 885) decided by the Second Circuit Court of Appeals in 1955, which case lays down the standard of proof required as to the cause of a fire. In that case drums of bleaching powder, marked "strong oxidizing agent—contact with combustible material may cause fire", were loaded in a hold with other cargo which was readily ignitable. After the fire, the drums which had contained the bleaching powder were found to have corroded through the seams and opened up from internal pressure, and the contents of the drums were missing. Counsel for libellant argued that since there was no other cargo in the hold which presented danger of spontaneous combustion, and since there was no possibility of any external agency having caused the fire, the burden of proof under the Fire Statute had been sustained. This contention was rejected by the Court, which said (page 74):

> "The question here is not whether the evidence would *support an inference* that spontaneous com-

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[1] Dr. Purdy testified:

> "There is a possibility that you might have impurities in crude naphthalene which would be subject to self-heating". (A.A. 369a)

The Chemical Advisor to the Labour Inspector of the Dutch Shipping Inspector at Rotterdam said:

> "A third possibility is that of impure naphthalene containing substances liable to self-heating". (Pet. Exhibit W. A.A. 488a)

Neither the trial nor the appellate court comments on this testimony, but this possible cause of fire remains in the case.

[2] The court does not explain how the rays of the sun could have been the cause of a fire which occurred at 11.10 P.M., some 4 hours after sunset.

bustion within the drums and the resulting leakage of the contents and resulting oxidation upon coming in contact with combustible material had caused the fire. *The question is whether the proof compelled such an inference.* Cases such as *Standard Oil Co.* v. *R. L. Pitcher Co.*, 1 Cir., 1923, 289 F. 678 and the *Edmund Fanning*, 2 Cir., 1953, 201 F. 2d 281, cited by libellants, do not sustain their argument." (Italics ours)

In the instant case, the trial court in his opinion discusses two possible causes of the fire—spontaneous combustion in the bagging and outside ignition. After considering the evidence, he concluded that neither had been established as the cause of the fire—that he was not compelled by the proof to infer that either was the cause. He then went further, and held that claimants had failed to establish their contention (and only charge of negligence against the carrier) that the fire would have been prevented if the stow of bags had been covered with tarpaulins.

In the instant case, the Court of Appeals does not hold that the proof compels an inference as to the cause of the fire. The Court of Appeals does not hold that the proof compels an inference that the use of tarpaulins would have prevented the fire. By its own rule of *The Shell Bar* case (supra) it should therefore have affirmed the dismissal of all claims. Instead, the Court of Appeals reverses and remands for further proceedings because it finds itself in disagreement with the trail court on two questions of fact.

First, the trial court found on the basis of the testimony of two expert witnesses, Dr. Aeby (A.A. 265a) and Dr. Purdy (R.A. 166a)[1] (the only witnesses questioned on the point) that the sun's rays could not have been a cause of the fire. (Finding of Fact No. 29; A.A. 527a). The Court of Appeals does not refer to the testimony of Dr. Purdy,

[1] Dr. Purdy said:

"I don't think that there would be any possibility of the sun's rays causing the fire or raising the temperature to the point where it would ignite."

but questions the testimony of Dr. Aeby on the ground that he may have misunderstood the evidence as to the temperature of the stow at the time of the fire.

Second, the trial court found on the testimony of three witnesses (Capt. Andersen, A.A. 319a; Capt. Lohse, R.p. 1078; Capt. Hollaar, R. A. 73a) and the statements in Claimant's Exhibit 38, that tarpaulins could become impregnated with oil and gases from the stow so as to be as inflammable as the bags themselves (Findings of Fact No. 32, 33; A.A. 528a). He also found on the basis of the testimony of three witnesses (Capt. Lohse, R.A. 43a; Capt. Harris, R.A. 98a; Dr. Snell, R.A. 178a)[2], including claimant's own expert chemist, that tarpaulins themselves are not flame-proof, and would therefore not have prevented outside ignition (Finding of Fact No. 30, A.A. 528a). The Court of Appeals does not even mention the definite testimony that tarpaulins themselves are inflammable, but disagrees with the trial court that they might become impregnated with gases from the stow.

It should be noted that these disagreements of the Court of Appeals with the District Court do not go to the real issue in the case, namely, have claimants established the cause of the fire? Substituting the indicated findings of the Court of Appeals for those of the trial court, we have only additional possibilities, not proofs. Nevertheless, the Court of Appeals on these disagreements remands the

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[2] Capt. Harris testified:

"I have seen a tarpaulin burning, catch afire on ship, where passengers have thrown cigarettes on the well deck and burned a hole right through the tarpaulin.

Q. A cigarette resting on the tarpaulin would burn a hole through it?

A. Yes, sir. I have seen that."

Dr. Snell testified:

"Q. Is there any such thing as a flameproof or waterproof tarpaulin?

A. No."

case for further proceedings on the question whether failure to cover the stow from rays of the sun could have been a cause of the fire. We submit that this is in clear violation of the well-established legal principles on which the appeal should have been decided.

That the burden of proof is on the cargo claimants to establish the cause of the fire is settled by a long line of authorities, among which are *The Cabo Hatteras*, 5 F. Supp. 725, 729; *Petition of Isbrandtsen Company*, 201 F. 2d 281, 284; and is accepted as ruling law by the claimants themselves. At the outset of their brief in the Court of Appeals, cargo counsel wrote—"The authorities establish that under these statutes cargo owners have the burden of proving that the destruction of their cargo resulted from the neglect of managing representatives of the vessel owner in the one case, and of Black Diamond in the other." (Cargo claimants' Brief on Appeal, p. 3).

The question before the Court of Appeals was not, therefore, whether this or that might have caused the fire, or whether tarpaulins if used as a cover might or might not have become impregnated. The question was, have claimants proved the cause of the fire? It was not required either of the respondents in their proofs or the trial court in his findings to show that the rays of the sun could not have caused the fire, or that tarpaulins could not have prevented the fire. It was the burden of cargo claimants to prove that the rays of the sun did in fact cause the fire, and that tarpaulins would in fact have prevented it.

The action of the Court of Appeals in this case is also in direct conflict with its own 1944 decision and opinion in *Hoskyn & Co., Inc. et. al.*, v. *Silver Line, Ltd.*, 143 F. 2d 462 (Certiorari Denied 323 U.S. 767), in which case it affirmed the dismissal of claims for cargo damage on the ground claimants had failed to prove the cause of the fire which occurred in the engine room of the vessel. The Court said at page 463:

"The libellants directed most of their energies to attempting to show that the fire was caused by the spraying of oil from a small intake pipe against the hot exhaust pipes and the hot cylinder head when excessive vibration caused the pipe to break. Yet there was no evidence that such a pipe did in fact break before the fire started. The respondent put forth a contrary theory supported by the testimony of its expert to the effect that an overhead fuel pipe in the engine room might have sprung a leak, with results later to be given. Yet there was no credible evidence that such a leak did occur so all was left to speculation."

And at page 465:

"It is no wonder that on this sort of evidence the trial judge could not decide which, if either, of these theories showed how the fire was caused or find what as a matter of fact did start it, and he had to leave that vital question unanswered. There is, therefore, nothing in this record which shows reversible error in respect to any of the decrees.

On the contrary there is ample support for the negative finding that the cause of the fire was not proved. Consequently it was not shown that any neglect of the owner caused it and such a finding is to be given effect on appeal."

That there is "ample support for the negative finding that the cause of the fire was not proved" cannot possibly be denied on the record in the case of the fire on the BLACK GULL.

In the penultimate paragraph of its opinion denying reargument in the instant case, the Court of Appeals writes as follows:

> "Libelants contended that the napthalene might have been protected by covering with tarpaulin. Petitioner's concede that the regulations say 'hazardous articles *may* be protected by the use of a tarpaulin'. The judges finding was that napthalene *could not possibly* have been protected by such means. It is with this that we have mainly found fault."

No clearer evidence of the error of the Court of Appeals in reversing the decision of the trial court could be found. Had the trial judge found that tarpaulins *could possibly* have protected the napthalene no fault would have been found with his decision. The Court of Appeals thus plainly admits that its reversal is based on its view that libellants may prevail if the evidence shows that tarpaulins *might possibly* have prevented the fire, and respondents may be liable because they failed to establish that tarpaulins *could not* have prevented the fire—a complete reversal of the established rule as to the burden of proof.

The claimants had their full day in court to make their proofs. Neither the trial court nor the Court of Appeals can say on the record that they sustained their burden of proof. What, then, is the justification for further proceedings?

The effect of the Court of Appeals decision is to hold the carrier liable unless it can prove that the fire could not possibly have resulted from its negligence. We respectfully submit that this is a reversal of established law under the Fire Statute which should be corrected by this Court.

II

The Court of Appeals erroneously holds that liability can be found against the carriers on grounds which violate the established legal rules for determining negligence.

Since the statutory fire exemptions required a dismissal of all claims where the cause of the fire was not established, the trial court properly found it unnecessary to and did not make findings as to the allegation of negligent stowage. The Court of Appeals has remanded the case for further proceedings to determine whether failure to cover the stow from the sun was negligent, and in its opinion suggests that negligence could be determined on a basis which, we submit, is contrary to well established legal principles, and which, if sustained, would create a most dangerous precedent.

As a standard of due care to determine whether it was negligent to fail to cover the stow from the sun, the Court of Appeals disregards the undisputed testimony of all twelve witnesses experienced in the carriage of naphthalene, who testified that uncovered stowage was the customary, best and safest method, and sets up as a standard its own unsupported and previously unadvanced interpretation of some wording in a United States Coast Guard regulation, and statements in letters written long after the fire in this case by unknown and unidentified persons connected with the Dutch shipping services, not called as witnesses, and their letters not even being certified or shown to be official documents.

It is unnecessary to cite in this Court at length the authorities defining negligence as failure to use the degree of care to be expected of prudent men engaged in the particular occupation. The Circuit Court of Appeals, First Circuit, said in *Roberts* v. *United Fisheries Vessels Co.*, 141 F. 2d 288 (Certiorari denied 323 U.S. 753) at page 291—

> "The nature of the business and the particular dangers involved determine the amount of care required in any particular case, whether on land or on sea. The test or standard to be adopted in determining whether the care used is proper and commensurate with the danger is the supposed conduct under the circumstances of a reasonable and prudent man. Failure to use the care that a reasonable and prudent man would use under like circumstances is the usual concept of negligence. That is the recognized standard of care required under the maritime law, under the Jones Act and under the Railroad Employees' Liability Act, 'the standards of duty' of which were 'carried over and adopted' by the Jones Act. Language used by Mr. Justice CARDOZO in his opinion in Cortes v. Baltimore Insular Line, 287 U.S. 367, 377, 53 S. Ct. 173, 176, 77 L. Ed. 368."

The court in *The Cabo Hatteras*, 5 Fed. Supp. 725 at page 735 applied the rule to stowage of cargo—

> "The question of common knowledge of a danger is to be decided from the standpoint of the knowledge, experience, and judgment of competent persons engaged at that time in loading cargo * * *."

Relying on this principle, respondents offered the testimony of twelve witnesses, five of whom were independent with no connection whatever either with the vessel owner or with Black Diamond. In addition to the four deck officers of the BLACK GULL, the Black Diamond European superintendent, the stevedore superintendent at Rotterdam and the Black Diamond Operating Manager, the following independent witnesses testified: Captain F. Verworst, nautical expert of the Tribunal of Commerce in Antwerp, who said that the stowage of the BLACK GULL was proper and in accordance with uses and customs (P.A. 187) and issued a formal certificate to that effect; Captain C. A. W. Bos,

Rotterdam Chief of the Nautical Department of the Holland-America Line who said that his company's vessels carried and still carried crude napthalene on deck uncovered as the best and safest method (P.A. 345); Captain S. Tang, General Superintendent of Terminal Operations of Isbrandtsen Steamship Co., who testified that carriage on the weather deck uncovered is the best and only safe method of stowing crude naphthalene (R.A. 84a); Captain James Harris, retired stevedore superintendent from Moore & McCormack who testified that naphthalene was always carried uncovered (R.A. 94a); Captain M. Allen, marine surveyor in New York since 1947, who gave his opinion that crude naphthalene should not under any case be covered (R.A. 106a).

The unanimous opinion of these experienced witnesses is summed up by Captain Tang at R.A. 84a:

> "Q. Why do you not recommend that it be covered with tarpaulin? A. Naphthalene being inflammable—and when we say inflammable we are not too worried about the fire hazard of the naphthalene itself, but we are extremely worried about the gases giving off from naphthalene, and in our opinion as much air as possible would prevent gas pockets from forming. In other words, we do not allow our ships to cover it with tarpaulins before lashing down—afraid of trapping gas and causing a fire hazard and the hazard of spontaneous combustion in the bags".

Not only was this the opinion of all experienced witnesses, but the evidence shows that it has been followed in long continued practice of carrying naphthalene on deck uncovered. The record shows hundreds of voyages by different steamship lines with hundreds of thousands of tons of napthalene cargoes so stowed. Month after month vessels arrived in United States ports with uncovered deck loads of crude napthalene, and no authority objected and no witness found such stowage improper or dangerous.

To oppose this evidence, the claimants called not one witness with experience in handling naphthalene cargoes. There can be only one reason—no such witness could be found. If there were a steamship man, a stevedore or surveyor who believed that stowage of naphthalene should be covered, the able counsel for claimants would certainly have produced him. It is the unanimous and undisputed testimony of all experienced witnesses that the stowage of the BLACK GULL was customary and proper.

Being unable to produce testimony, claimants' counsel dug up a Coast Guard Regulation, and on the basis of a distorted reading of a provision took the position and repeated it again and again that the stowage was a violation of United States law. The Court of Appeals now adopts this reading of a Coast Guard Regulation not as a violation of law, but as the standard of care to be applied to the question of negligence in this case.

The only charge of negligence against the carrier is failure to cover the stow of bags with tarpaulins. As the Court of Appeals states in the last paragraph of its opinion denying rehearing, this was not a violation of any regulation having the force of law. The question is whether it was a violation of the standard of due care under the law of negligence.

Although all maritime nations have regulations covering the shipment of dangerous articles, the United States Coast Guard Regulations for "Explosives and Other Dangerous Articles On Board Vessels", as amended July 1, 1947, is the only one which mentions naphthalene. These regulations cover "practically every commodity that is shipped" (P.A. 410), and naphthalene is in Class K, the least dangerous class, along with hundreds of other commodities, such as burlap, cork, cotton, paper scrap, wood shavings, etc. (Exhibit 10, P.A. 410).

The Court of Appeals in its first opinion stated (App. 19a) that by the regulations the stowage of naphthalene "is required to be under cover". The actual regulations make no such requirement, and when it was pointed out in the petition for reargument that the regulations in plain words allow shipment on deck "protected from the elements by structural erections", (i.e. bulwarks, hatch coamings, forecastle-head, housings, masthouse (R. A. 89)), the Court of Appeals then said in its opinion denying reargument that while the regulations do not require tarpaulin covers, this was one of the methods of protection allowed—"structural erections, awnings *or* tarpaulins." Thus the standard of care which the Court of Appeals sets up is no more than a permissive method of protection under the regulations.

The regulations for the carriage of cargo "on deck protected" apply to many hundreds of different commodities with differing characteristics calling for different methods of protection. Some commodities on voyages in hot climates might require protection from the sun; others such as explosives or drums of acid might require secure covering by tarpaulins. The regulations assume that the shipper will select the appropriate method, and the men responsible for stowage have always understood this. See the testimony of Captain Tang, (R.A. 88). The unanimous opinion of all experienced witnesses was that the coverage of naphthalene was improper and dangerous, and that this commodity came under the requirement of protection by structural erections.

The basis of the Court of Appeals reversal is that the sun might have been a cause of the fire, and that it might have been negligent not to cover the naphthalene from the sun on the standard of care indicated by the Coast Guard regulations. Yet the regulations themselves particularly exclude tarpaulins as a protection from the sun—"shall be protected from the elements by structural erections *or* from

the direct rays of the sun *by means of awnings or dunnaging.*"[1] Thus the standard of care indicated by the Court of Appeals is a permissive regulation which denies the use of tarpaulins as protection from the sun.[2]

The Court of Appeals also refers to a Dutch "regulation", which it said in its original opinion was "in effect" at the time of the fire; but in its opinon denying reargument the court admits the regulation was not published and therefore did not have the force of law. References to this unpublished "regulation" that naphthalene should be protected from the effects of the sun's rays are found in letters written by unidentified persons from the Dutch Shipping Inspector's office. Neither the writers nor the receivers of the letters were called to testify (Exhibits 35, 45D and W; A.A. 464a, A.A. 471a, A.A. 488a). The existence of this so-called regulation was denied by the two distinguished Dutch maritime lawyers, Drs. Van Rossem and Blusse, who after a special investigation testified that there was not and never had been any Dutch regulation mentioning naphthalene (P.A. 287; P.A. 325). It was unknown to any witness who testified—including long experienced Dutch steamship men and stevedores, and those who loaded the vessel and the officials who issued certificates approving the loading and stowage of the BLACK GULL for the voyage (Exhibit M, P.A. 424).

The Court of Appeals says that this Dutch "regulation" was "drafted by officials who presumably knew their business". What officials, and why they are presumed to know more about the stowage of cargo than the responsible men

[1] Claimants offered no evidence that the stow could have been protected by awnings or dunnaging, and the substance of the evidence is that such methods are entirely impractical for a full deck cargo on a trans-Atlantic voyage.

[2] The reasons are quite apparent from the testimony. A tarpaulin covering would trap heavy gases in the stow and increase rather than decrease heat from the sun—it would cause "a fire hazard and the hazard of spontaneous combustion in the bags" (R.A. 84a).

who actually testified does not appear. The Court then says that the Dutch "regulations" "like the Coast Guard regulations represent an accepted standard of care". Accepted by whom? Not by the experienced men employed to protect the safety of their ships and cargoes by Black Diamond, Holland-America, Isbrandtsen, Moore & McCormack, United States Lines, all of whom testified that covering the stow was improper and dangerous; not by the Tribunal of Commerce officials at Antwerp who issued a formal certificate approving the stowage of the BLACK GULL; not by any Dutch officials, none of whom had ever objected to uncovered stowage; not by the United States Coast Guard itself, since for more than thirty years ships with uncovered deck loads of naphthalene had been arriving at United States ports on hundreds of occasions without objection from any official.[1]

The opinion not only violates the established legal rules for determining negligence—if allowed to stand, it would create a most dangerous situation, with consequences to shipping which would be serious indeed. If the courts are to fix standards for methods of stowage contrary to the standard arrived at by the experience of competent seamen engaged in the business, lives and property at sea will be put in jeopardy. Suppose the stow of bags in this case had been covered by tarpaulins as suggested by the Court of Appeals. For eight days heavy gases would have accumulated in the stow, and when fire broke out there could have been immediate and total disaster, rather than a four and one-hour period to fight the fire and bring off the passengers and most of the crew to safety.

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[1] Claimants had Commander Mazzotta, the officer charged with the enforcement of Coast Guard regulations on the stand, but carefully refrained from asking him if uncovered stowage of naphthalene on deck violated the regulations (A. A. 387a).

CONCLUSION

The opinion and decision of the Court of Appeals in this case does violence both to settled law under the Fire Statute and established rules of the law of negligence. If allowed to stand it will have far-reaching and most damaging effects on United States and, indeed, world-wide shipping interests. We respectfully submit that this situation calls for correction in this Court.

February 28, 1958.

WARNER PYNE,
DUDLEY C. SMITH,
Counsel for Petitioner.

[Appendix Follows]

District Court Opinion

(Filed July 23, 1956; reported 144 Fed. Sup. 1956)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DIMOCK, *D. J.*

This controversy arises out of a fire which occurred on the Norwegian M/V Black Gull, on July 18, 1952. As a result of this fire, the vessel became a constructive total loss and most of her cargo was either destroyed or damaged. Four members of the crew lost their lives. Other members of the crew and some of the passengers allege that they were injured and that they lost their baggage and personal effects.

Four proceedings have been instituted as a result of this disaster. The first is a proceeding for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the Black Gull. The second and third cases are suits for non-delivery of and damage to the cargo which was on board the Black Gull at the time of the fire. Libelants, in those two suits, are the owners or underwriters of that cargo. Respondent in those suits, Black Diamond Steampship Corp., was the time charterer of the Black Gull and issued the bills of lading for the cargo carried on that voyage. The fourth proceeding is one for wrongful death of a Belgian mess-boy, brought by his widow and children against the same respondent. I have not attempted to distinguish between libelants and claimants and for purposes of this memorandum, I have grouped both under the term "libellants" except where otherwise indicated.

There is no real dispute about the facts leading up to the disaster. The vessel left Rotterdam on July 10, 1952,

bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel on this voyage was manned by a crew of forty and carried nine passengers.

The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulkwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulkwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing in the starboard wing of the bridge, heard what he described as "a hollow dull dump" from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered.

During the voyage, the temperatures ranged from a high of 77°F to a low of 61°F. The last recording taken on the 4-8 P. M. watch on July 18th indicated a temperature of 72°F. These temperatures were taken on the bridge and therefore indicated the temperature in the shade only.

Passenger claimants stated in their brief that the fire was caused in one of two ways. They state that it was caused either by external ignition from something like a cigarette butt or spark or that it was caused by spontaneous combustion in the stow of naphthalene. They further allege that negligence of the petitioner or respondent was responsible for the disaster, whether the physical cause of the fire was external ignition or spontaneous combustion.

In order to recover, libelants must prove that the fire was caused through design or neglect of the petitioner or respondent. *Automobile Insurance Co.* v. *United Fruit Co.*, 2 Cir., 224 F. 2d 72.

Here, there are two possible causes of the fire. Passenger claimants expressly conceded this point in their brief filed subsequent to trial. While the libelants have attempted to rule out spontaneous combustion as a cause of the fire, the evidence clearly shows it to be chemically possible. There was testimony of a "hollow dull dump" immediately before the fire was discovered. Dr. Purdy, respondent's expert, testified that a fire caused by ignition from a spark or cigarette butt on the top of the stow would probably not commence with such a sound. Since the bags were packed so closely together that no crevices remained between them, it is doubtful that an outside ignition source could have found its way below the top of the stow. In addition, the location of the start of the fire lends credibility to the possibility of spontaneous com-

bustion. The first close investigation found the fire in the middle of the top of the stow and on the side of the stow between the second and third tiers from the top. Under cross-examination by the libelants, Dr. Purdy testified that a fire which started on the top of the stow would not naturally work directly downward; rather, he stated, it would be expected to flame over the surface and through the flow of melting naphthalene to distribute the fire. On the other hand, a fire which started within the stow would naturally work out to the side at that level and work up to the top directly above it. This is exactly the position of the fire when first investigated. Thus, since a fire resulting from spontaneous combustion would start within the stow, this lends further strength to that possibility in this disaster.

Dr. Purdy, the expert called by respondent, testified as to the possibility of spontaneous combustion of the bagging having caused this fire. He stated that self-heating may cause a fire in previously used bags in which impurities from prior commodities might remain. In two tests he ran involving similar bagging, some self-heating resulted. From these experiments he stated that, without definitely knowing that no impurities were present in the bags on the Black Gull, spontaneous combustion was chemically possible. Both Dr. Purdy and Dr. Snell, the experts called by libelants, agreed that, once the bagging started to burn, the heat from the burning bagging would ignite the naphthalene.

There being no direct testimony as to an external ignition, spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire.

Libelants must prove that petitioner or respondent was negligent and that negligence was the cause of the fire whether it was started by external ignition or by spontaneous combustion. Without this proof, the fire might have been caused without any negligence on the part of petitioner. In that event, libelants would be barred from

recovery. *Automobile Insurance Co. v. United Fruit Co.*, 2 Cir., 224 F. 2d 72, *supra*.

There are, therefore, two questions that are immediately before me. They are: (1) If the fire was caused by spontaneous combustion, did any negligence of petitioner or respondent cause the spontaneous combustion? (2) If the fire was caused by external ignition, did the failure to cover the stow of naphthalene with a tarpaulin proximately cause the first? I will discuss these questions separately.

1. Libelants contend that, if spontaneous combustion occurred, it could only have done so because of foreign impurities in the bags. Otherwise a rising temperature in the crude naphthalene itself would have caused the naphthalene to melt and consequently cool before it reached its flash point.

Libelants then contend that petitioner or respondent was negligent in allowing the use of bags soiled with impurities and in not providing sufficient ventilation so that spontaneous combustion would be prevented.

So far as evidence is concerned libelants left this issue severely alone. There is no evidence that the impurities on the material of the bags which would render naphthalene susceptible to spontaneous combustion would be discoverable on inspection. Libelants do not go to the extent of saying that the danger inherent in stowing naphthalene in second hand bags was so notorious that the petitioner or respondent should have refused to accept the cargo. They suggest that loose stowage permitting ventilation would inhibit spontaneous combustion but no evidence was offered that there was any feasible method of stowage which would have that effect. No explanation was vouchsafed as to how those responsible for the ship could permit the ventilation alleged to be necessary to inhibit spontaneous combustion and, at one and the same

time, envelope the cargo with the tarpaulins alleged to be necessary to protect it from sparks and cigarette butts. I find that libelants have failed to sustain the burden of proof that the petitioner or respondent was negligent in accepting cargo in a condition susceptible to spontaneous combustion or in failing to stow it so as to inhibit spontaneous combustion.

2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

Libelants' argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be "the leading European authority on

dangerous cargo", unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact. Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence "This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling". Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging. There is no claim that tarpaulins are not inflammable. In fact, Captain Harris, an employee of Moore-McCormack Lines, Inc., testified in both direct and cross-examination to having seen tarpaulins burn. Thus the failure to cover the stow with a tarpaulin could not have been a contributing cause of the fire.

The effect of the above discussion is that I hold that there is no proof that the fire was caused by the negligence of either petitioner or respondent.

In deciding that petitioner and respondent have not been proved to be guilty of negligence I recognize that they are required to exercise a higher degree of care for the safety of passengers than for the safety of cargo. *Maibrunn* v. *Hamburg-American S. S. Co.*, 2 Cir., 77 F. 2d 304; *Moore* v. *American Scantic Line*, 2 Cir., 121 F. 2d 767. Nevertheless I find that libelants have not sustained the burden of proof that any failure of petitioner or respondent to exercise the high degree of care of which a carrier must devote to the safety of passengers was the proximate cause of any loss or damage.

There still remains for my decision the questions whether respondent was negligent in its attempt to extinguish the fire and whether respondent was negligent in its rescue operation.

No serious claim is made that respondent did not do everything within its power to extinguish the fire. Water was applied to the fire immediately after it was discovered and at a time when the fire was still restricted to a small area. There is no evidence which could lead me to believe that respondent's failure to extinguish the fire, after four and a half hours of fighting it, was due to any fault on its part. From the evidence, I believe that the officers and crew of the Black Gull did the best possible job against an unbeatable fire.

Passenger libelants allege that the passengers were further injured due to negligent use of the lifeboats. They contend that as soon as the severity of the fire was discovered the port lifeboat should have been lowered in order to prevent its destruction. In addition, they claim that the starboard lifeboat, after they were in it, was kept moored to the Black Gull and that this resulted in scorching which in turn forced them into the water.

The reason that the master gave for not lowering the port lifeboat was that it would have required sending men into an area close to the fire. This, he felt, would have unnecessarily placed those men in a potentially dangerous situation. In addition, the starboard lifeboat had sufficient room for all members of the crew and passengers. There was, therefore, no absolute necessity for saving the port lifeboat. Once the port lifeboat was destroyed, however, it was necessary to keep the starboard lifeboat close to the vessel to take on the members of the crew if total abandonment of the vessel was ordered. Thus it was necessary to keep the lowered starboard lifeboat close to the burning vessel.

As a matter of fact it was not proved that keeping the lifeboat moored to the vessel resulted in the scorching and submersion. The starboard lifeboat, with the passengers in it, was let down from its davits on the midships building. It was then hauled forward in order to have it forward of the fire. The wind and sea were coming from the starboard side and the boat was shipping water. At the same time water from the fire hoses was running through the scuppers on deck down into the boat. The second officer, who was in the boat, cut the painter which moored the boat to the vessel and the members of the crew in the boat tried to get the boat clear of the ship's side. The ship had headway, however, and they were unable to get the boat far enough from it before the boat got abreast of the fire at number 4 hatch to avoid the scorching of the heat. The second officer therefore ordered all to go overboard on the lee side of the boat and hang onto the lifeline. After the boat passed number 4 hatch they all got into the lifeboat again. With only four oars in use and without rowing the lifeboat was kept near the ship. Four members of the crew thereafter jumped overboard from the ship and were picked up. Then all the rest of the crew, except the four who lost their lives, came aboard from the vessel. All in the boat were rescued by the Gripsholm.

I need not determine from my hindsight knowledge whether I would have followed a different plan in abandoning the vessel. I cannot say that the master's choice in not saving the port lifeboat was negligence. At that time, it was foreseeable that the fire would be extinguished. Therefore he saw no need to send men into the fire area to lower the port lifeboat. Once that lifeboat was destroyed, the master had no alternative but to keep the starboard lifeboat available to rescue all persons on board the vessel. Since the boat had to be kept available it was natural to keep it moored until it appeared that the sea against the

side of the vessel and the water from the scuppers were filling it. There is no suggestion that the cutting of the painter was negligent or that the failure to get far enough from the ship to avoid scorching as the boat passed number 4 hatch was negligent. Since passenger libelants' criticism is that the boat was kept moored, their position must be that it was negilgent to moor the boat to the ship until it appeared that the boat was in danger of filling instead of trying to get clear of the ship as soon as the boat was in the water. There is, however, no reason to believe that, if they had tried to get clear of the ship immediately they would have been any more successful in getting away from the effective range of the fire. No attempt was made to show that the fire was any hotter when the boat finally passed it than when the boat was first launched.

There is therefore no negligence proved in the fighting of the fire or in the rescue operations.

I therefore grant the petition for exoneration from liability and deny libelants any recovery.

E. J. DIMOCK
United States District Judge

UNITED STATES COURT OF APPEALS

For the Second Circuit

(Decided November 29, 1957).

POPE, *Circuit Judge*:

The proceedings in the court below grew out of a fire which occurred on the Norwegian M/S Black Gull on July 18, 1952, while she was on a voyage from North European ports to New York. Four members of the crew lost their lives; most of the cargo was either destroyed or damaged, and the vessel became a constructive total loss. These proceedings were three in number: the first was one for exoneration from or limitation of liability instituted by Skibs A/S Jolund, owner of the Black Gull; the second was a suit for non-delivery of and damage to the cargo which was on board at the time of the fire (the libelants in that suit are the owners or underwriters of the cargo, and the respondent was Black Diamond Steamship Co., time charterer of the Black Gull, on its own behalf and on behalf of the Master); and the third proceeding was one to recover for the wrongful death of one of the lost seamen brought by his widow and children against the Black Diamond Steamship Corp.

The facts leading up to the fire and the loss are set forth in the second amended memorandum of the trial judge, as follows: "The vessel left Rotterdam on July 10, 1952, bound for United States east coast ports, the first of which was to be New York. She carried general cargo below decks which had been loaded at Bremen, Hamburg, Antwerp and Rotterdam. In addition, she carried on the weather deck approximately five hundred fifty tons of crude naphthalene in previously used jute or burlap bags which had been loaded in Antwerp and Rotterdam. The vessel

on this voyage was manned by a crew of forty and carried nine passengers.

"The crude naphthalene was stowed about six bags high. The stow covered both port and starboard sides of the afterdeck over an area of some 13-16 feet wide and approximately 90 feet long. The forward weather deck of the vessel, both port and starboard, contained an approximately similar stow of bagged crude naphthalene. In athwartship direction, the stow started just inboard of the bulwarks and continued to a line about three feet out from the sides of the hatch coamings. A dunnage fence kept the stow clear of the bulwarks and permitted a three foot wide passageway through which members of the crew could pass. This passageway also kept sounding plugs and hose connections available to the crew. The stow was secured in place by rope nets but was otherwise uncovered.

"On the evening of July 18, 1952, the vessel passed the Nantucket Shoals Light on her way to New York. At about eleven o'clock, the deck officer, standing on the starboard wing of the bridge, heard what he described as 'a hollow dull dump' from the afterpart of the vessel. Looking in that direction, he saw smoke and a small flame coming from the after weather deck port side abreast number 4 hatch about 100 feet from his position on the bridge. After ordering water on deck, he went to the area in the vicinity of the smoke. He there saw fire in the middle of the top of the load and fire on the side of the load between the second and third tiers from the top.

"Although an attempt was made to extinguish the fire it was necessary to abandon the vessel about four and a half hours after the fire was discovered."

The libel of the cargo owners against Black Diamond Steamship Corp. (here called Black Diamond), after referring to the shipments, and bills of lading therefor, al-

leged: "The shipments described on Schedule 'B' either have not been delivered at all to the persons entitled thereto or have been delivered to them short, slack and seriously injured and damaged, and such parts of said shipments as have been delivered were, at time of delivery, subject to alleged liens for salvage and other charges not contracted for in the said bills of lading."

Black Diamond asserted non-liability under the *Carriage of Goods by Sea Act* (U. S. C. Title 46, §1304(2)), which provides that the carrier shall not be responsible for loss or damage from fire "unless caused by the actual fault or privity of the carrier." These cargo owners, appellants here, claim there was fault or negligence on the part of Black Diamond's managing agents, in failing to protect or cover the deck stow of bagged naphthalene from the direct rays of the sun so as to avoid heating and to protect from the foreseeable possibility of ignition from sources such as sparks, lighted cigarettes or cigar butts.

The court made no finding as to whether Black Diamond was guilty of negligence in these respects for it held that any failure to cover the bags of naphthalene could not have been a contributing cause of the fire; that coverage of the stow would not have prevented the fire. In its Finding 36, that there was lack of proof that any such failure to cover the stow was a proximate cause of the fire, the court said: "Even if it be assumed that failure to cover the stow of bagged naphthalene with a tarpaulin was either negligence or in violation of controlling statute or regulation, libelants have not proved that that failure was a proximate cause of the fire." Its key findings as to lack of causation are its Nos. 29 and 35, as follows: "29. The sun's rays could not have caused or contributed to the cause of the fire." "35. The failure to cover the bags of naphthalene on the 'Black Gull' with a tarpaulin was not and could not have been a contributing cause of the fire." Findings 30 to 34 inclusive were evidently intended to

be explanatory of one reason for the court's finding of lack of proof of causation,[1] stated in the court's second amended memorandum as follows: "2. In discussing this possibility of outside ignition, I shall assume, without deciding the question, that the failure to cover the stow with a tarpaulin was either negligent or in violation of a controlling statute or regulation. I therefore turn to the question whether this failure to cover the stow with a tarpaulin proximately caused the fire.

"Libelant's argument that a tarpaulin would have prevented ignition from an external source runs something like this. The danger of ignition of crude naphthalene is increased by heating. As the temperature rises, greater amounts of readily-ignitable gases are given off. Since the temperature in the area of the stow was in excess of 120° F., the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt. In addition, the bagging was impregnated with creosote oil from the crude naphthalene which is also readily ignitable. From these allegations libelants argue that a

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[1]These are as follows: "30. Tarpaulins are inflammable.

"31. Coverage of the stow of bagged naphthalene with a tarpaulin would not have prevented the fire on the 'Black Gull.'

"32. A tarpaulin coverage would not have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have afforded protection only if the creosote oil or gases could not impregnate the tarpaulin or if the tarpaulin itself was not inflammable. Neither is the fact.

"33. The gases given off by crude naphthalene would permeate or saturate tarpaulins which covered bagged naphthalene.

"34. Creosote oil from the crude naphthalene and the gases given off by the crude naphthalene could have impregnated a tarpaulin covering bagged crude naphthalene and would thereby make the tarpaulin as inflammable as the impregnated bagging."

tarpaulin would have protected the stow from heating by the direct rays of the sun and would have prevented contact between a spark or cigarette butt and the bagging impregnated with creosote oil and gases.

"I cannot accept libelants' contention. First of all, the testimony is overwhelming that the sun's rays could not have caused or contributed to the cause of the fire. Both Dr. Purdy, respondent's expert, and Mr. Aeby whom libelants assert to be 'the leading European authority on dangerous cargo,' unequivocally state this conclusion. Therefore, the presence of a tarpaulin, by protecting the stow from the sun's rays, would not have prevented this fire.

"Nor would a tarpaulin have afforded protection from ignition due to creosote oil or gases. A tarpaulin could have done so only if the creosote oil and gases could not impregnate the tarpaulin or if the tarpaulin was itself not inflammable. Neither is the fact Libelants' Exhibit 38, an order issued by respondent that naphthalene must not be stored on hatches contains the sentence 'This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling.' Thus the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging."

If we assume, as did the trial judge, that the failure to cover the stow was negligence, it is our opinion that the quoted findings to the effect that the failure to cover the naphthalene could not have been a contributing cause of the fire, were clearly erroneous. Noting the court's reference, in the portion of the opinion last quoted, to the testimony of Dr. Purdy and Dr. Aeby, it seems probable that the trial judge misinterpreted what they said. In the quoted portion of the opinion the court found that the temperature in the area of the stow was in excess of 120° F. Dr. Aeby, testifying on deposition as an expert witness for the cargo owners, stated that even at 70° to 75° F.

particles of naphthalene gas would be liberated into the air, and (as the court found), that "as the temperature rises naphthalene gives off increasing amounts of gas", and that those gas particles which are given off will ignite at a temperature of approximately 125 F. which is the "flash" point of pure naphthalene.[2]

It is true that in answer to a hypothetical question reciting the temperatures recorded in the log book on the vessel during the period of July 11 through July 18 (the day on which the fire broke out), Dr. Aeby testified that, based on an assumption of certain named maximum temperatures, it would be his opinion that the rays of the sun could not have been a cause or contributing cause of the fire. But these named temperatures were immaterial. Apparently the Judge overlooked the fact that these temperatures stated in the hypothetical question were taken inside the chart room on the bridge and in the shade. The highest temperature taken there was 25 centigrade or 77 F. recorded at noon on July 18 (the day of the fire). That was not the important temperature;—the important one was the temperature in the area of the stow found to be in excess of 120 F. at which time, the court's opinion says, "the naphthalene was giving off a substantial quantity of gases which impregnated the bagging and made the bagging susceptible to ignition from a spark or cigarette butt."

Both Dr. Aeby and Dr. Purdy (who was Black Diamond's expert), testified that the temperature on the deck which was exposed to the sun would be much higher than that on the bridge in the shade. Dr. Purdy also testified that the quantity of gas given off would be increasingly greater as the temperature rose; and that in his opinion there was no possibility that the sun's rays would raise the temperature

[2]Dr. Snell, an expert testifying for Libellants, stated that the flash point of crude naphthalene was "somewhat lower" than that of pure naphthalene. Dr. Aeby said he could not tell the precise flash point of this crude naphthalene without testing the particular product.

to the point where the gas would ignite. But it is noted that it is not the theory of the appellants that the gas would ignite because of the heat alone. Dr. Purdy's testimony seems to mean that the temperature where the cargo was stored was never high enough to cause it to burst into flame unaided by an ignited flame. This does not sustain a conclusion that the sun's rays could not have "contributed to the cause of the fire."

The record shows that the rays of the sun increased the heat of the deck cargo and as the heat increased the amount of gas released became greater and greater. The recorded bridge temperatures indicated that the hottest day was the day the fire broke out; as shown in the court's opinion, the temperature at this point exceeded 120° F. The gas would, according to the testimony of Capt. Hollaar, Black Diamond's marine superintendent, mix with the air and form an explosive mixture. Plainly enough such gas was a dangerous substance, and in view of the likelihood of ignition by sparks, burning cigarettes or cigars, the production of excess quantities of the gas could well be the proximate cause of the fire.

Another respect in which it would appear that the trial court was led mistakenly to conclude that failure to cover the bags of naphthalene could not have been a contributing cause of the fire was in its failure to note the substantial evidence in the record that a tarpaulin coverage would have afforded protection from ignition. The trial court's views with respect to the efficacy of a tarpaulin are expressed in its findings, Nos. 30-34 inclusive, set forth in footnote 1, *supra*. They are also expressed in the last paragraph of the portion of the opinion which we have quoted above. The Judge's theory, there disclosed, is that if the stow had been covered by a tarpaulin, the gases and the creosote oil given off by the crude naphthalene would have impregnated the tarpaulin or saturated it and made it as inflammable as the impregnated bagging. There is no such evidence in the record.

Evidently the trial judge thought that libelant's exhibit 38 tended to support his view that the gases and oil would permeate a tarpaulin used to cover the bagged naphthalene; but exhibit 38 has no reference to a tarpaulin so used. It is a directive addressed by Black Diamond to all masters and mates and dated March 30, 1933. Assuming that the fact that the libelant introduced this exhibit takes away from its self-serving character, it refers not to tarpaulins used to cover a stow of naphthalene but it is a directive against stowing naphthalene on hatches.[3] If naphthalene were piled on a hatch or hatch cover which in turn was covered by a tarpaulin, the likelihood of the creosote oil under the pressure of the pile permeating the tarpaulin could readily be conceded without its having any bearing whatever on what would happen to a tarpaulin which was used to cover a stow of bagged naphthalene. The law of gravity makes the difference.

With respect to tarpaulins used for covers, there was evidence to the effect that they would serve the purpose of aiding in preventing fire. Dr. Snell, an expert called by libelants, testified that tar had not been used in water proofing of tarpaulins for generations; that in modern times the cloth of a tarpaulin is treated with chlorinated paraffine which serves the purpose of both waterproofing and flameproofing. Capt. Hollaar testified that tarpaulins used on Black Diamond's ships were impregnated with material to make them watertight. There is no evidence in the record that gas would permeate a watertight tarpaulin. Capt. Hollaar testified further that if the outside source of ignition were a cigar or cigarette butt, it would be much less likely to ignite the stow if it were covered by tarpaulin

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[3]The communication stated in exhibit 38 read as follows: "TO ALL MASTERS & MATES: *'NAPHTHALENE'* Under no circumstances is naphthalene to be stowed on hatches. This material permeates tarpaulins and hatch boards and in a recent instance damaged cargo and necessitated replacement of ceiling. This commodity therefore is to be stowed on steel decks only."

than if the stow were uncovered. Perhaps the most persuasive proof that the trial court must have been mistaken in its belief that covering the stow with a tarpaulin would be wholly ineffective to prevent fire, is furnished by the regulations of the United States Coast Guard. Under those regulations naphthalene, crude or refined, is classified as a hazardous article, and its stowage is required to be under cover.[4]

Regulation 146.27-6 provides as follows: "Protection for 'on deck' stowage.—Hazardous articles that are permitted stowage 'on deck in open' or 'on deck protected' may be protected by the use of structural erections, awnings, or tarpaulins."

Regulation 146.03-34 recites that under the regulations stowage terms are defined as follows: "(b) On deck protected means the articles may be stowed on the open weather deck of a vessel. It is required that dangerous cargo stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnaging."

It seems to us significant that in the Coast Guard regulations tarpaulins are an approved method of protection for hazardous articles with no suggestion whatever that they are not suitable for protection of bagged naphthalene.[5]

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[4] These regulations provide under the heading of "Required Conditions for Transportation" with respect to naphthalene and on a cargo vessel as follows: "Stowage: 'On deck protected.' 'On deck under cover.' 'Tween decks readily accessible.' 'Under deck (in a cool, dry, well ventilated hold).'"

[5] In its findings the court ignores the regulations' reference to "structural erections" and "awnings." Some witnesses for the owner and for Black Diamond testified that in their view those would be impractical because they would be carried away in storms. One who testified that awnings were impractical was a Capt. Tang, an employee of another steamship company. This is the same witness who essayed an interpretation of the Coast Guard regulations by stating that it was his view that the words "on deck protected" meant "pro-

We hold therefore that this case cannot be disposed of on the basis of the court's erroneous finding that there was no proof of proximate causation. This means that the trial court should have made findings upon the question of whether there was negligence on the part of Black Diamond in the respect claimed by the appellants, namely, the failure to cover the cargo to protect it from the sun and from outside ignition.

Of course to charge Black Diamond with negligence sufficient to establish liability, it must appear that the negligence was with "the actual fault or privity of the carrier." If the failure to cover the cargo here was negligence, it was plainly "that of an executive officer, manager or superintendent whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred."[6]

Capt. Hollaar, who did not hesitate to assume full responsibility for the way in which the bagged naphthalene was stowed, was a supervisory and executive official in this sense. He had general supervision over all matters relating to the loading of ships for Black Diamond in the ports of Hamburg, Bremen, Rotterdam and Antwerp. He was the company's European marine superintendent. As the

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tected against the sea, to be lost overboard, the bags torn open, or the cargo scattered." He said that this protection was afforded by the "forecastle head, bulwark and hatch coamings." The Captain's interpretation of the Coast Guard regulations was plainly in direct conflict with the express language of the regulations quoted above. Capt. Hollaar had no such understanding as had Capt. Tang, for he testified as follows: "Q. And you knew that under the Coast Guard regulations of the United States if carried on deck it must be under a cover or protected by awnings or tarpaulins? A. I knew that the Coast Guard regulations read that way. Q. You knew that the naphthalene on 'Black Gull' was not so covered? A. Yes.

[6]The quoted language is from *Coryell* v. *Phipps*, 317 U. S. 406, 410. The court was there discussing the meaning of the phrase; "privity or knowledge" in connection with a limitation of liability proceeding. The same test is applicable here.

court found, he was "in complete charge of all matters of stowage on vessels under charter to respondent and had no superior in Europe." There is no contention that Capt. Hollaar was not Black Diamond's alter ego in Europe, or that he was not performing with authority duties of a managerial nature. Cf. *The Edmund Fanning,* S. D. N. Y., 105 F. Supp. 353, 364, 369, affirmed on this point, 201 F. 2d 281, 284.

Capt. Hollaar participated in the preparation of the loading plan for the Black Gull before her departure; he knew that she was to carry naphthalene which was to be loaded on deck; he saw it when loaded, and saw that it was not covered. He knew that the naphthalene was volatile: that gas would escape and that when mixed with air it could form an explosive mixture; that naphthalene was classified as hazardous cargo; and he had read many handbooks on dangerous cargoes including that of Dr. Aeby. This book, a standard authority on the topic, described and classified various types of dangerous goods, that is, those defined in the book as "those which of themselves or by reason of chance circumstances may give rise to difficulties or cause accidents during transport by boat." The book stated that "By inflammable, * * * we understand a substance which at a more or less high temperature, gives off such gases as, in the presence of a naked flame, ignite or explode. The temperature at which this phenomenon occurs is called 'flashing point' or 'flash point' and is determined by the Abel-Pensky apparatus." The author then lists the flash points of some 38 chemical compounds in which appears "naphthalene—125° F." The book contains recommendations for packing and stowage of various kinds of goods and under the head of naphthalene the recommended stowage is stated as follows: "Stowage: On deck, covered and protected from the rays of the sun or under deck, in a cool and well-ventilated compartment, away from living quarters and foodstuffs." Capt. Hollaar also acknowledged familiarity with the regulations of the U. S. Coast Guard

relating to dangerous articles on board vessels to which we have previously referred.

There was also evidence of a Dutch shipping decree in effect when this vessel left Rotterdam which contained a regulation relating to the stowage of naphthalene on board ship reciting that such stowage should be "On deck protected from the sun's rays; or below deck in a well-ventilated, dry hold, in a cool place." We note also that the same Dutch regulation provided: "Open fires and smoking near a cargo of naphthalene must be prohibited."

This reference to smoking suggests that which requires no specific evidence, namely, that in the circumstances of this case, the likelihood of ignition of the gas by a spark from the stack or burning cigarettes or cigar butts was foreseeable.[7] The foreseeability of such an occurrence is evidenced not only by the fact of the making of the quoted provision concerning smoking in the Dutch regulations, but it is a matter of common knowledge that where smoking goes on the smokers are likely to throw away burning cigarettes or cigars. One cannot drive through a national or state forest without being reminded by road signs of this common fact of life. The court found that certain of the passengers smoked on the voyage, as did certain of the officers and crew. It found that the passengers smoked on the weather deck, the boat deck, the sun deck and the bridge deck.[8] Some of the passengers smoked on the boat

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[7]Dr. Snell stated that the bagged naphthalene itself might be ignited directly from a cigarette. His theory was that since a burning cigarette produces a temperature of at least 500° F., and naphthalene melts at 174° F., if a cigarette fell on a bag the naphthalene would melt and be absorbed by the bagging material, which would act like a wick in a candle, thus igniting the whole contents of the bag.

[8]There were five or six "No Smoking" signs, some of which were visible from the boat deck, and in the cabins were signs warning against throwing cigars or cigarettes out of port holes, or over the side.

deck after dinner on the evening on which the fire started. Some of the crew smoked on the main deck. It was also found that there were no receptacles on any of the decks for burnt cigars, cigarettes or matches. The uncovered stow of the naphthalene aft the court found extended to within approximately 6 feet of the boat deck.

Without making any finding as to whether the fire occurred through spontaneous combustion the court referred to it by finding that "there is a theoretical possibility of spontaneous ignition of the bags containing the naphthalene," and that "spontaneous combustion of the bagging cannot be eliminated as a possible cause of the fire." The court further found that pure naphthalene is not susceptible to spontaneous ignition, but that none of the bags in which it was packed had been tested for susceptibility to spontaneous ignition.

Appellants argue that the fire could not have resulted from spontaneous combustion. But even if there had been evidence of a possible spontaneous combustion, clearly enough the dangerous substance was the gas produced by the heat. Increased heat would increase the volume of gas and failure to protect the stow from the direct rays of the sun could well constitute a contributing cause of a fire from spontaneous combustion. Assuming that spontaneous combustion was possible, it would be foreseeable that a likelihood of that taking place would be increased as the heat and the gas increased. In other words, the danger was foreseeable whether it came about through sparks, cigarettes or spontaneous combustion.

The cause must therefore be remanded for further findings on two issues:

(1) Was it negligent to fail to cover the cargo from the sun?

(2) If so, was the negligence the cause of the damage?

In passing upon the question of negligence, it is not important that the vessel had not entered United States waters when the fire occurred so that Coast Guard regulations had not then become operative as a controlling or binding statute. The court can consider these and the Dutch regulations as a norm or standard of care. With these the court may consider such facts of common knowledge as the tendency of smokers to throw away lighted butts; the fact that the wind blowing across the boat deck on the day the fire occurred would tend to carry a tossed cigarette in the direction of the bagged naphthalene; that the direct rays of the sun cause heat, and in a confined area out of the wind, the heat tends to increase further. The court may consider the feasibility of precautions, such as covering with tarpaulin, or the furnishing of what the Coast Guard regulations describe as "structural erections," or "awnings." We cannot say that there are no other feasible methods for protecting cargo from the sun. Some of Black Diamond's witnesses objected to tarpaulin covers as likely to hold and trap the gas from the naphthalene. We cannot say as a matter of law on this record that a tarpaulin over the top, but not over the sides of the cargo would not be feasible. This gas is heavier than air. Some of the same witnesses testified that many cargo carriers stowed naphthalene in the same manner here employed.[9] Proof of trade practice is not proof of what constitutes due care in the premises, nor is the utilization of reasonably required safety devices excused merely because they involve additional expense.

On the question of causation the court may find that the increased amount of gas generated by the sun's heat was

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[9]Although Capt. Hollaar testified that Black Diamond's practice was to carry crude naphthalene on deck uncovered, he recalled instances in which such cargo had been covered on the insistence of the shippers. It also appeared that competition had compelled Black Diamond to accept shipments of naphthalene for "under deck" stowage.

confined to the top layer of burlap bags and was rapidly dissipated by the wind, so that it was not a cause of disaster, or it may find that the sun heated the bags despite the breeze. Failure to negative completely the possibility of spontaneous combustion does not prevent recovery here if it is shown that the catastrophe was in fact caused by negligent failure to protect the cargo from the sun. Whether the spark that triggered the fire was spontaneous or from a cigarette, the liability of the persons responsible for failing to keep the sun off is the same.

The Verbeeck Case Against Black Diamond

Verbeecks' libel bases its claim for recovery against Black Diamond for the death of this Belgian seaman on the provisions of the Death on the High Seas Act, Title 46, §§ 761-768, which provides a cause of action for death "caused by wrongful act, neglect, or default occurring on the high seas."[10] It was stipulated that under the law of Norway a similar right of action for death by wrongful act is granted the widow, children and other dependents of a Belgian seaman employed on a Norwegian ship.

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[10] "§ 761. Right of action; where and by whom brought—Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued."

"§ 764. Right of action given by laws of foreign countries—Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding."

What we have said above with respect to the sufficiency of the proof of negligence and of the proximate cause of the fire makes it necessary that on Verbeecks' appeal from the decree dismissing their libel against Black Diamond the cause be remanded for findings on those questions.[11]

The Appeals From the Decree Exonerating Skibs A/S Jolund

The decree granting exoneration to the owner of the vessel is challenged by three groups of appellants: the cargo owners, the seven passenger appellants, and the Verbeecks.

As for the cargo owners, the controlling enactment is the Fire Statute, Title 46 U. S. C. § 182,[12] which provides the owner exemption from liability for loss to cargo by fire "unless such fire is caused by the design or neglect of such owner." These appellants assert that such "design or neglect" was established here by proof that one Capt. Svendsen was a managing officer representing the owners and whose scope of authority included supervision over the phase of business out of which the loss or injury occurred, within the meaning of *Coryell* v. *Phipps, supra.* The owner was a Norwegian corporation and all matters pertaining to the management and maintenance of the vessel were in the hands of Sigurd Herlofsen & Co., also a Norwegian corporation, as manager for the owner. As the court found,

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[11] We are not required by this record to pass upon the question whether, as concerns Verbeecks' case against Black Diamond, the latter might be chargeable with negligence on the part of the ship's officers in failing to prevent smoking by passengers.

[12] "§ 182. Loss by fire. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

the entire management of the ship was entrusted to the latter corporation. Capt. Svendsen was employed by Sigurd Herlofsen & Co. He states in his deposition that he became head of the Marine Department of Sigurd Herlofsen & Co. on January 6, 1954; but in June and July, 1952, when the fire occurred, he had not been appointed to this position. In response to an inquiry as to where he was then employed by the employing corporation, he replied, "I was in the Marine Department in the office in Oslo." At that time the head of the Marine Department was a Captain Wellton. Capt. Svendsen testified: "I just had the work given to me by Capt. Wellton. For instance, I might be sent out on a ship as a captain, or anything that he thought he needed me for." He said that he knew that ships under charter to Black Diamond carried cargoes of naphthalene in that fashion; but he had never discussed with any officer of Sigurd Herlofsen & Co. the manner of stowage on the Black Gull or any other vessel chartered to Black Diamond.

The only finding made by the trial court concerning Capt. Svendsen was its finding No. 70 as follows: "At and before the time of the voyage here involved, it was personally known to Capt. Inge Svendsen, who assisted the head of the Marine Department of S. Herlofsen & Co., which managed the 'Black Gull' for petitioner, that respondent customarily carried bagged naphthalene on deck on vessels which it chartered from petitioner, covered only by manila rope netting." No doubt, because of its findings that there was lack of proof of causation of the fire, the trial court considered it unnecessary to make a specific finding as to whether Capt. Svendsen was an executive officer, manager or agent.

In the case of *Consumers Company* v. *Kabushiki Kaisha*, 320 U. S. 249, the negligence to which the loss of cargo by fire was attributable, was that of one Captain Fagen who had been employed to supervise stowage on the ship in question. (The facts were discussed at length when the

case was in this court, 133 F. 2d 781.) But in that case the trial court had found that Captain Fagen's "authority, however, was limited to supervision of meal stowage for the K Line at Kobe and to the giving of instructions to the masters with reference to such stowage. He was not a marine superintendent, general agent or managing officer of the K Line." *The Venice Maru*, 39 F. Supp. 349, 352.

While the court below might well upon the record here have made a similar finding with respect to Capt. Svendsen, it did not do so. The court's conclusion of law No. 7 was as follows: "The fire was not caused by the design or neglect of the petitioner and the Fire Statute is a complete defense as to all claims for cargo loss or damage." This conclusion appears to be based upon the trial court's findings that there was no proof that the fire was caused by any neglect or negligence whatever. Admiralty Rule 46½ contemplates that the findings of fact and the conclusions of law shall be stated separately.[13] If the court intended its conclusion No. 7 to be a finding of fact that the representative of the owner charged with negligence was not of managerial rank, it did not say so. The conclusion, as worded, is susceptible of interpretation as having been predicated solely on findings of a lack of causation.

For reasons previously stated in discussing the question of Black Diamond's liability, we hold that there was evidence from which the court might have found that the fire was caused by negligence in the manner of stowage of naphthalene and the failure to cover it. Should the court find, as did the court in *The Venice Maru, supra*, that Capt. Svendsen was not a general agent or managing officer, then the owner will be entitled to exoneration as against the cargo owners. Should the court find that Capt. Svendsen was a managing agent, then the court must determine whether any neglect or failure to act on his part constituted

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[13] "In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; * * *"

negligence, and if so, whether the same was a proximate cause of the loss.

With respect to the claims of passenger-appellants, the Fire Statute is inapplicable as it concerns loss or damage to merchandise only. The passengers are entitled to the benefit of the rule stated in Title 46 U. S. C. §183(e) as follows: "In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the Owner of such vessel."

Since 1949 the Captain had been acquainted with the American Coast Guard regulations and knew that they required that naphthalene when carried on deck should be covered. As one acquainted with the regulations he should have known that they classified naphthalene as a dangerous cargo.

As for the claim of Verbeecks against the owners, it is plain that they also are entitled to the benefits of §183(e) quoted above. The owner, differing from Black Diamond,[14] is entitled to the benefits of the Limitation of Liability Act, 46 U. S. C. §183, as against a claimant under the Death on the High Seas Act (*In Re Wood's petition* (2 Cir.), 239 F. 2d 197), which contains special provisions relating to claims for loss of life or bodily injury.

In view of what we have said heretofore concerning the claims of the passengers and the issues in the action of the Verbeecks against Black Diamond, it is apparent that the cause must be remanded for further findings respecting the issues as between the Verbeecks and Skibs A/S Jolund.

The decrees are reversed and the cause is remanded for further proceedings consistent with this opinion.

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[14] Which is not an "owner" within the meaning of the Act, Gilmore and Black, The Law of Admiralty, 1957, p. 673; Benedict, The Law of American Admiralty, 6th ed., §497.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

On Petitions for Rehearing

(Decided January 16, 1958)

POPE, *Circuit Judge:*

Upon petitions for rehearing appellees assert that our opinion is in error in stating that there was no evidence to support the trial judge's theory, based on Exhibit 38, that naphthalene "permeates tarpaulins and hatch boards," and that "the creosote oil and gases could impregnate the tarpaulin and thereby make the tarpaulin as inflammable as the impregnated bagging."[1] Appellees say there is credible uncontradicted evidence that the gases and oils would impregnate or saturate a tarpaulin and "make it as inflammable as the impregnated bagging."

Our opinion makes plain why we think the trial court misunderstood or misinterpreted Exhibit 38, and why we consider the findings drawn therefrom clearly erroneous. As for the contention of the petitions that there was other evidence to support the judge's view of Exhibit 38, we cannot so read the record. The witnesses whose testimony is listed by petitioners carefully avoided saying any such thing.[2] One said that *if* a tarpaulin became impregnated

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[1] "The Judge's theory, there disclosed, is that if the stow had been covered by a tarpaulin, the gases and the creosote oil given off by the crude naphthalene would have impregnated the tarpaulin or saturated it and made it as inflammable as the impregnated bagging. There is no such evidence in the record."

[2] Thus Black Diamond quotes Captain Hollaar's testimony as follows:

> "Q Captain Hollaar, it has been suggested by Mr. Longley if the tarpaulin were put over the stow of naphthalene it would become, to use his words, permeated with naphthalene.

with *naphthalene* it would become inflammable. Others said if tarpaulins were used for cover they would be impregnated with the "odor" or "smell" of naphthalene. No testimony supported the court's theory, mistakenly deduced from Exhibit 38, that use of a tarpaulin as a cover would "*make the tarpaulin as inflammable as the impregnated bagging.*" The trial court's theory was dependent upon this "as inflammable." If, as Capt. Hollaar testified, a cigarette or cigar butt "would be much less likely to ignite the stow if it were covered by tarpaulin than if the stow were uncovered," then the theory of lack of causation falls to the ground.

Again petitioners challenge our statement that the trial judge's opinion described the deck temperature as "in excess of 120° F." It says this was a mere recital of libelant's argument. We do not so read the judge's opinion. The finding as to bridge temperatures, in the shade, was irrelevant. The evidence in the record shows that the 120° F. which the judge took as being accurate, was in fact so. It was arrived at by adding to the 77° bridge temperature the 43° difference which Dr. Purdy testified would exist in the higher temperature on deck.

As for the petitions' statement that we misread the Coast Guard regulations as requiring tarpaulin covers, reference

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Captain, in your opinion, would a tarpaulin which had become permeated with naphthalene be about as inflammable, more inflammable or less inflammable, than burlap bags? A. Well, if it had become permeated with naphthalene of course it would be in practically the same condition as the jute bags."

(On recross examination): "Q. Captain, are you seriously telling us as an experienced mariner that a tarpaulin is as readily ignitable as a burlap bag? A. If it was impregnated with naphthalene, I do not see any difference."

Thus the Captain carefully says: *If* the tarpaulin was impregnated with naphthalene it would be inflammable. No word from him says that a tarpaulin used to *cover* such a stow *would* become impregnated; much less that it would, as the judge seemed to think, become "as inflammable as the impregnated bagging."

to the opinion will show we did not say that. In footnote 4 we listed the alternative "Required Conditions for Transportation." One of these is "on deck protected.' Regulation 146.27-6 provides that this condition may be satisfied by the use of "structural erections, awnings, or tarpaulins." by underscoring the word "may" in the last sentence, petitioners argue this means such protections are merely permissive. This ignores the words "Required Conditions," and ignores the words "shall be protected" in Regulation 146.03-34(b) quoted in the opinion. But this is all beside the point. Lioelants contended that the naphthalene might have been protected by covering with tarpaulin. Petitioners concede that the regulations say "hazardous articles *may* be protected by the use of a tarpaulin." The judge's findings was that the naphthalene *could not possibly* have been protected by such means. It is with this that we have mainly found fault.

As for the contention that the Dutch regulations, or portions thereof, were not in effect because not published, for our purposes it is of no consequence whether the Dutch regulations shown in the record had the force of Dutch law or not. Plainly they were drafted by officials who presumably knew their business. Our mention of them has not been for the purpose of disclosing any violation of any regulation having the force of law. Our reference was merely to show that like the Coast Guard regulations they represent an accepted standard of care.

The petitions for rehearing are denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 815

In the Matter

of the

Petition of SKIBS A S JOLUND, as owner of the M S BLACK GULL for exoneration from of limitation of liability.

SKIBS A S JOLUND,

Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASERICK & CO., *et al.*,

Respondents,

MARIA VERBEECK, *et al.*,

Respondents.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION OF SKIBS A/S JOLUND FOR CERTIORARI

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MARIA VERBEECK, *et al.*,

Respondents.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION OF SKIBS A/S JOLUND FOR CERTIORARI

I

At page 2 of their brief, respondents say that the petition is premature, and at page 8—"we find it difficult to understand why either petitioner feels that this Court

should grant a petition for certiorari to consider this case in its present posture."

In its present posture this case stands for the proposition that an ocean carrier must prove with respect to every fire at sea that it could not have resulted from the carrier's personal neglect—a complete reversal of the rule, in effect for more than one hundred years, as to burden of proof in fire cases. This decision, if sustained, would seriously affect every contract in ocean shipping and call for a complete revision of fire insurance coverage.

In its present posture this case says that carriers may be required to substitute for the long-continued practice of carrying naphthalene on deck uncovered a method of covering with tarpaulins; despite the practice proven by undisputed testimony of competent seamen and stevedores that uncovered is the best and safest stowage, and that coverage with tarpaulins is highly dangerous. Right now cargoes are going to sea regularly, stowed in violation of what the Court of Appeals says is a standard of due care, a standard arrived at by the Court of Appeals on the basis of an erroneous and unsupported reading of a Coast Guard regulation.

Petitioner believes that it is vitally important to the shipping industry and urgently necessary for safety at sea that the opinion of the Court of Appeals in this case be reviewed and corrected at the earliest possible time.

II

It is clear as set out in our petition that the Court of Appeals reversed the trial judge because he failed to consider whether tarpaulins could *possibly* have prevented the fire. In effect, the Court of Appeals holds that if the evidence shows an act of the carrier which might *possibly* have been the cause of the fire, the court may infer that it was the cause and hold the carrier liable.

In answer to our position that this is a violation of the established rule as to the burden of proof, respondents state (brief, p. 8)—"Both courts below and the present respondents have always recognized that it is cargo's burden to prove that its destruction by fire was casually related to the negligence of managing officers of the vessel-owner or character." We suggest that what the court and respondents "recognize" in writing as being the law is of no importance where the actual holding of the court is in violation of and direct conflict with that law. The question here raised as to the court's holding is purely a question of law, and is one of vital importance to all shipowners.

III

In the last paragraph of page 6 of their brief in opposition, respondents state—"The Court of Appeals held that United States Coast Guard Regulations and a Dutch Regulation, established by the evidence as controlling, provide a standard of due care (24a)." Certainly respondents can not contend or mean that there was violation of any regulation having the force of law, for the Court of Appeals expressly denied this in the third from the last sentence of its opinion on the petition for rehearing (p. 32a).

(1) The Coast Guard Regulations.

These are quoted by the Court of Appeals (Opinion, p. 19a) as follows:

> "146.03-34 (b) On deck protected means the articles may be stowed on the open weather deck of a vessel. It is required that dangerous cargo stowed under such conditions shall be protected from the elements by structural erections or from the direct rays of the sun by means of awnings or dunnaging."
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> "146.27-6. Protection for 'on deck' stowage. Hazardous articles that are permitted stowage 'on deck in open' or 'on deck protected' may be protected by the use of structural erections, awnings, or tarpaulins."

By these regulations, said the Court of Appeals (19a—1st paragraph) the stowage of naphthalene "is required to be under cover". On page 7 of the brief in opposition, respondents state that the Coast Guard Regulation "clearly required that a deck load of naphthalene be covered by awnings, dunnage or tarpaulins."

A simple reading of the regulations themselves shows that both the Court of Appeals and respondents' counsel have changed the word "protected" to the word "covered", and have completely ignored the permission to protect by structural erections, which was the method followed in the case of the *Black Gull*.

We said in our petition, and say again, that the statement that the regulations require a deck load of naphthalene to be under cover is a distortion of the clear words of the regulations. We have no hesitancy in saying this because its truth is established by the action of the Coast Guard itself. The undisputed evidence shows hundreds of voyages over a period of years with deck loads of naphthalene uncovered, and that at no time had the Coast Guard, charged by law with enforcing its regulations, found any violation or impropriety in such uncovered stowage. The Coast Guard security officer charged with enforcing the regulations in New York harbor, called as a witness by cargo respondents, gave not one word of testimony of violation of any regulation, or of criticism of the *Black Gull* stowage (A.A. 387a).

(2) The Dutch "Regulation".

The Court of Appeals (22a) says that there is evidence of a Dutch regulation "in effect when the vessel left Rotterdam". Respondents' brief in opposition (page 7) states that this is established by a letter (Exhibit W). The evidence clearly establishes that no regulation concerning naphthalene is or ever was "in effect" under Dutch law unless published in official publications. Exhibit W, offered in rebuttal by petitioner under a special, agreed arrange-

ment, disproves any regulation, and says that the so-called regulation contended for by respondents to protect naphthalene from rays of the sun "is going to be published". To hold that this or any other exhibit establishes a standard of care is exactly like saying that a driver may be arrested for speeding because someone has written a letter saying that the speed limit is going to be lowered. We cite below the record*.

The alleged Dutch regulation is that naphthalene be "protected from the rays of the sun". What possible casual connection there could be between the rays of the sun and

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* Cargo respondents (opposition brief p. 7) say they find it "strange" we say there was no Dutch regulation in view of Petitioner's Exhibit W. Any fair or proper view of the record clearly disproves existence of any Dutch regulation concerning naphthalene, and Exhibit W was offered to disprove, and did disprove, such a regulation. This is what occurred: In cargo respondents' case, that party offered letters, clear hearsay, written about two years after the *Black Gull* fire by uncalled witnesses to cargo agents, and the court sustained petitioner's objection. (P.A. pp. A63-64). Later, during petitioner's defense case, cargo attorneys again endeavored, and again, unsuccessfully, to have its letters received; and when the court adhered to its prior ruling, the cargo proctor then accepted petitioner's offer to waive the objection on the understanding and agreement that similar hearsay letters could be received in rebuttal (P.A. 312; typewritten minutes pages 850 to 862). Thereupon attorneys for cargo respondents (then libellants) offered Exhibits 35 and 45B—written as stated long after the *Black Gull* fire by and to uncalled witnesses—were received. To *disprove* them and *disprove* existence of the alleged Dutch regulation Petitioner's Exhibit W was offered and received in refutation of Exhibits 35 and 45B, under the agreement mentioned (A.A. p. 489a). Exhibit W disproves the alleged regulation, for it shows that even in May 1954 the alleged regulation had not been published, but merely was "going to be published" (A.A. p. 489a). All the Dutch lawyers who testified, including cargo respondents' witness Beerman, conceded that a regulation to be adopted or become effective must be published (Van Rossem P.A. p. A318; Blusse P.A. pp. A330-1-2; Beerman A.A. p. 205a). Cargo respondents fail in their opposition brief to mention either Petitioner's Exhibit X (P.A. p. A427) a letter from the Rotterdam Harbor Master which clearly and unequivocally states there was no Dutch rule or regulation; or Petitioner's Exhibit V (P.A. p. A426), a letter from the Dutch Inspector of Shipping at the Hague, which states that neither the alleged regulation referred to by cargo respondents nor any other had ever been published.

a fire which first broke out at 11:10 p.m. at night, is not explained by either the court or respondents. Even if there had been a violation of an effective or controlling statute, which the Court of Appeals recognizes is not the case, it would not avail cargo here under the Court of Appeals' own rule. In *The Automobile Insurance Co.* v. *United Fruit Co.*, 224 F. 2nd 72, a violation of a regulation was proved, but was not established as the cause of the fire. The Court of Appeals said at page 75:

> "We think it significant that no court has applied the doctrine of statutory fault in a case involving the exemption provided by [the fire] statute. We are unwilling to allow a presumption supplied by the doctrine of statutory fault to substitute for proof of cause required by statute."

At the top of page 7 of their brief, respondents refer to "the testimony of the opinion witnesses" who were "persuaded" to testify. The reference is to the twelve experienced witnesses whose testimony we reviewed at page 15-16 of the petition. These are not opinion, but factual, witnesses. Their unanimous and undisputed testimony established an open practice continued over a period of more than 30 years of uncovered stowage of naphthalene which no authority, United States, Dutch or other has ever questioned.

We respectfully submit that the manifest errors of the Court of Appeals in this case call for reversal in this Court, so that the decree properly entered by the District Court may be reinstated.

March 14th, 1958

Respectfully submitted,

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